
INSTITUTE FOR DEVELOPMENT
AND SOCIAL INITIATIVES (IDIS) 'VIITORUL'

# Monitoring Report

## on Local Government Reforms in Moldova March 2003 - January 2004

# Summary:


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**General Overview**
**of the statute of local autonomy in the Republic of Moldova**


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A Report by:
Dr. hab.Victor Popa
Dr. Igor Munteanu




For more information or comments please do not hesitate to contact us at:
Tel: (00 373-22) 21 09 32, idis_viitorul@mdl.net

Chisinau , Iacob Hincu 10/14, Republic of Moldova
Phone and Fax: (373-22) 21 09 32
e-mail: idis_viitorul@mdl.net

# I. OVERVIEW: RECENT TRENDS IN LOCAL PUBLIC ADMINISTRATION:

Reviewing the main events that took place in 2003 the impact of various processes and tendencies in local public administration (LPA) should be noted. These processes and tendencies regarding the public power system in Moldova are apparently contradictory. In this context the strong influence of the state administration in strengthening the vertical power base should be mentioned. This principle, although it is mitigated in external communication – as a consequence of the numerous interventions and appeals elaborated on the subject of local administration by the experts of the European Council, - continues to guide the process of state decision making. Decisions affected by this policy include: resource distribution, administrative auditing and other state policies in areas of public interest such as: price auditing, tax auditing and economic development.

Understanding LPA in Moldova is not possible without taking into account two major issues: European integration and the settlement of the Transnistrian conflict. Both tendencies have the same strategic objective, the settlement of the territorial conflicts and the strengthening of the state. This is to be achieved through the establishment of a more favorable economical and political situation in the Republic of Moldova, as part of the constitutional, political and economical arrangements. Achieving these complementary targets however has not been clearly defined by the state officials. Even the process of federalization started by the authorities in February 2003 involves great risks for the democratic institutions in the Republic of Moldova. The European Parliament has also noted the danger of this process stating in its resolution of December 18th 2003[1] (p.6) that: „ the sovereignty and territorial integrity of Republic of Moldova is the basis for any peaceful settlement of the conflict". Furthermore the EP appreciates that "the peace plan presented by Russia with the purpose of offering legitimacy for the present situation constitutes an obstacle on the path of continuous democratic development and does not contribute to the stabilization of the region".

The process of federalization could have substantial consequences not just on the federal format of the central power, but also on the degree of local and regional autonomy and on the competencies of the local and regional authorities elected on May 25th, 2003. This has made us include a brief analysis of the tendencies in this domain as part of this report.

## 1.1. The Impact of Centralization policies on Local Government in 2003

Directly after the general elections in February 2001, the Communist Party of Moldova (CPM) formulated the principle of the „vertical power". This principle has played a major ideological role in the party in its strategy to strengthen its control on the territorial-administrative structures. To achieve this, supporters of the CPM were appointed in state bodies, while at the same time disloyal elements were cleaned from the state structures. Disloyal elements were removed under the guise of the fight against corruption, hiring better qualified professionals but also through insistent rejecting of unwanted candidates. This happened to mayoralty secretaries, department chiefs and even to categories of auxiliary office workers for finance and budget, public administration and education. For example: of the rayon chiefs for child protection only one out of 11 was confirmed. But, the strengthening of the sectors role as early as 2001-2002, and depriving the rayons of important financial-budgetary attributes in August 2001, did not only have the goal to get rid of disloyal elements in the territory, but also to ensure the unconditional implementation of economical and political decisions. The main principle in the relation between the central power and the local authorities is the installment of a net of „hierarchical superiors" in all the domains which the government considers are of „national interest". Indifferent of adopted legislation or whether the necessary resources for the implementation of the assigned tasks are available at the local level.

As an example can serve the regular appeals of the government to raise the efficiency of tax collection, parallel with the reduction of the number of tax collectors for local authorities, through decisions which stipulate the size of the staff. This is against the stipulations of the 6th article of the European Charter (the sequence of structures and the administrative means for the tasks of the local administration). Chişinău for example had to reduce its staff by 45,4%, or in absolute terms: from 1,140 to 441 employees, and remained with only 0,8 civil servants for 1.000 inhabitants (while the EU the average is 36 employees for 1,000 inhabitants).

It is believed sometimes that the imperfect legislation is due to the short legislative experience. Unfortunately, in the Republic of Moldova bad laws often are adopted deliberately, with the purpose of bringing about confusion, as well as the lack of progress in the political and administrative decentralization between the central government and the local authorities, including public finances. However, since all domains are to be considered „vulnerable" in conditions of an acute deficit of public resources, the local authorities are exposed to a systematic attack, achieved through frequent interventions of the state. Other methods are through daily auditing of the administrated budgets, as well as allotting tasks without specifying the financial sources. We could even say that there is a real economy of the administrative system, through which different auditing aspects are kept over the legally recognized duties so that the local authorities are made responsible for the effects or the absence of the policies at the national level.

An important instrument to achieve this, is the instrument of administrative repression. This instrument is used against local authorities, which have been warned to unconditionally and immediately fulfill all the central indications, if a simple warning does not help (for example: the government's decision through which the penalties are raised for not paying on time the wages of the budgetary categories)[2]. Another instrument used by the authors of the vertical power belongs to the exertion of influence, legally unjustified, in domains where administrative control is applied, exerted in Moldova by the government state territorial offices [3]. Through this the administrative control that should be exerted by the authorities of the central administration exclusively on the tasks „delegated to the local public authorities" (art 8, p.2, European Charter) have a compulsory character on all domains recognized by the local authority's competence. The territorial offices (Chapter II, p.7 from the rules) are skilled to: exert compulsory control over decisions of the local authorities of I$^{st}$ and II$^{nd}$ level, on the *„ document's legality regarding the organization of auctions, documents of assigned grounds, of normative documents signed by the mayor, the rayon's president, the documents of employing and the documents of firing the personnel of LPA, the orders of the expenses or the financial pledges of at least 30,000 lei for the I$^{st}$ level and at least 300,000 for the II$^{nd}$ level but also the legality of the documents emitted for the exertion of the duties assigned by the state to the authorities of local public administration".* This opportunity control is applied in an unsuitable way to all actions undertaken by the local authorities and not just to the delegated ones! This is against the recognized functions at the European level for the authorities for which are recognized this type of competences.

The third instrument of exerting vertical power is the financial one. The practice of sending from above the control numbers for the formal aprovement of the local budgets did not avoid in 2003 the local authorities which unlike previous years kept the appearances of a certain legal coherence. The Parliament in September – October 2003 already adopted the annual budget for 2004, when 95% of all local authorities had not even reached the variant of budget projects for December. As a result they were forced by the „superior hierarchical authorities" (obviously – by the rayon and the state territorial offices) to quickly adopt the allotted quota by the Ministry of Finance and its rayon departments.

Finally, we mention the manner of speech that central officials use, (for pleasure or political interest) terms that are not correct from a legal point of view, but which, through systematic use, produce a behavior which is a part of the administrative system of the authorities. An example comes from the newspaper Moldova Suverană, calling the field visits of officials: meetings with „the staff of territorial administrative units"[4] , establishing „commands" and „giving indications to the local authorities". The same as last year, President Vladimir Voronin insists on the necessities to „re-establish the vertical power", which he stated in his territorial meetings and in his statements in the press. According to Voronin the reform of 1998 ended with *„the creation of 12 small governments, real feudal knezats, which could not assure social-economic prosperity of the inhabitants", ..."reducing the local governments to the statute decorative institutions, without real opportunities for territorial development"*[5(3)] The lack of economic resources for territorial development has resulted in over 64% of the people living under the poverty line, mostly inhabitants from rural zones, especially from small towns. However, the officials could not present until now real arguments to support their assertions that the disintegration of the old judets (11) in the structure of the new rayons (33) will increase the local resources, be reduce bureaucratic local administration and strengthen legitimacy.

The official newspapers vehemently attacked the analysis of the reform costs, made by IDIS and BCI in January-February 2003; however this did not serve as a plausible argument on reducing the costs of the future territorial-administrative structures. More than that, the costs substantially grew for the maintenance of the rayon structures. According to the government's decisions No.688 and No.1220 from 10.06.2003 and 10.10.2003, the personnel of village mayoralties has to be between 4 and 13,5 units; and the city mayoralties (except Chişinău and Bălţi), between 8 and 26,5 units. The personnel of the rayon's president and his seven sub-divisions will be allowed to be between 60,5 to 83 units. These numbers show certain growth of the number of civil servants, although, as we have seen, it

is insufficient for them to work normally. Aware of these tendencies, the officials repeatedly required the rayons leadership to respect the structure adopted through the government decision of the leadership staff of the territorial units. The Parliament voted in September 2003 for new amendments on the Code of administrative trespasses, approved on the 9th of July by the cabinet ministers, and according to them, there fines are foreseen from 70 to 100 minimal wages „for the budgetary central and local institutions which will exceed the quota rules of personnel". Nobody knows if these penalties were applied to the rayon councils most of which, continued to hire new office workers for the structures which were created after June 2003. Probably not, they ensured the necessary protection (against the penalties) through various personal relationships, or through services fulfilled at the indications given by the government on the domains, which obviously regard only the local public authorities. We can only guess to what extent this spectacular personnel increase was reflected in the budget. We mention that in September, government officials declared that they intend to require the Parliament to earmark 140 mln lei for finalizing the change to the new rayon system. After this finalization immediately after the elections, they received another 180 mln for the expenses planned as early as 2002 through the local budgets and the central subsidies. Thus, in concordance with the government's decisions of 2001, 2002, and in 2003 the governmental press closed the access of civil society to discussions in public of these evolutions, despite of their request to start a dialogue[6]. The invitation from IDIS Viitorul to debate together with the employees from the Public Administrative Department of the State Office, the property statute, the statute of the local councilor and the administrative auditing, exerted through the territorial offices, remained without an answer, although the respective letters were posted in September and October.

The process of returning to rayons seems to serve another purpose, which we have to take into account. Thus, besides the acrimonious satisfaction of the CPM leaders to cancel the results of the reform initiated by the previous governments (1998) under the argument of fulfilling their electoral promises, we can notice that the government wanted to decrease the role of the conventional regional authorities towards the autonomous-territorial authorities (UTAG). On July 28th 2003, The Parliament adopted in the second reading, the definitive modifications of art.73, 110, and, 111 from the Constitution, through which were established the constitutional stipulations of the special juridical status of the territorial autonomy Gagauz Yeri. According to these modifications, Găgăuzia is an autonomous territorial formation with a special juridical status, an integral part of Republic of Moldova, which independently solves the political, economical and cultural problems according to the stipulations of the Constitution.

71 deputies of the PCM faction and 5 independent deputies voted in favor of the modifications. But, not later than August, a group of deputies (18 from 29) of the Popular Assembly of Comrat signed a petition through which they required that the Gagauz autonomy should have the status of a subject with the same rights as Transnistria, as part of the future federation, requiring that UTAG be represented at the negotiations regarding the federalization [7(4)].Previously, President Vladimir Voronin, publicly excluded this possibility, mentioning that the federalization principle cannot be extended endlessly. However already in September, the chief of state declared that he greeted and encouraged the endeavors of the UTAG to participate as a subject of the future federation, and that because he could discern the possibility of using the recognized state UTAG as a negotion model in relationship with Tiraspol. With all this, the leaders from Comrat were never invited to participate as the pentagonal part of the negotiators, nor did the Russian Federation consult them on the model proposed in the middle of November 2003.

## 1.2. European Integration and implementation of the PACE Resolutions:

There is an obvious relation between the implementation of the international pledges and the steps made by the officials from Chişinău with the goal to integrate and associate to EU. It is obviously in the interest of the Republic of Moldova to eliminate any suspicions over its will and capacities to honor the member's obligations of the European Council. Without which, we can not talk about assuming more complex pledges such as opening the negotiations for the country's association to EU. That is why it is so incomprehensible how the authorities of RM imagine they can be heard by the EU in conditions when there are serious questions over the way the authorities fulfilled PACE recommendations regarding the normalization of the political process and the democratic institutions, No. 1280 from April the 24th and also the recommendation Nr. 110 of CPLRE „over the local and regional democracy in Moldova"[8], as a result of monitoring the reform process in the local public administration.

The opinions expressed by the opposition are negative regarding the way the political power tries to fulfill the European political forum recommendations, showing its capacities to assimilate the necessary standards for the working of democratic institutions in the RM. As a result of the political crisis since the middle of November, when the chief of the state, Vladi-

mir Voronin, intended to sign the Memorandum of the Transnistrian conflict settlement, a Committee for the Protection of Independence and the Constitution was created. Many political parties and NGOs joined this organization. Among the proposals of this informal political organism were: the defense of the existing constitutional frame of the Republic of Moldova, attracting attention in European forums regarding the situation in Moldova, rejecting the attempts of harming the people's sovereignty, ensuring the achievement of the political pluralism in RM and promoting political dialogue in society on the strategic development priorities. After the foundation, the political opposition sent out numerous appeals and declarations in which it underlined its concern regarding the lack of progress in the targeted domains of the Resolutions from April and September 2002[9]. While the officials from Chişinău appreciate as a successful experience the monitoring and the fulfillment of these recommendations, the opposition vehemently disputes these assertions, stating that political evolutions from 2003 are disastrous for the democratic institutions and the country's image. More than that, the CPIC members find that, in 2002, a degradation took place of the general-political situation simultaneously with a stronger intervention of the state power structures, justice, the security service and the police in supervising and intimidating the united opposition. The democratic institutions do not function any more in conditions when clear signs of total usurpation of the state power by the country's president exist. Respectively, CPIC required from its' representative in Chişinău , Vladimir Phillipov, the immediately convocation of the monitoring Committee for fulfilling, by the Republic of Moldova, of the member obligations of the statute of the European Council and sending two reporters for supervising the situation.

We mention that, on October the 1st 2003, president Voronin participated in the fall working session of the European Council, when the mandate owned by RM as President of the European Council's Minister Committee ended. On this occasion, the chief of state declared that „the RM totally fulfilled the pledges of preadherence towards the European Council and the PACE resolutions". Literally, he asserted that, „Although initially, the two PACE resolutions were perceived very hard both by the opposition and the authorities, Moldova unconditionally fulfilled the majority of the recommendations. In doing so they not only achieved political stability, but also progress in the introduction of European Standards in the political process in Moldova"[10(5)]. The representatives from the Ministry of Foreign Affairs announced that in August RM would sign agreements of free exchange with all the member countries of the Stability Pact of South-East Europe by the end of 2003. Concomitantly, after Moldova will deposit the adherence application to EU, in September 2003, the government was supposed to elaborate a concept of European integration. We ought to remember that the idea of European integration for the RM is an idea formulated since 2002, and elaborated a national strategy for EU integration. This change shows not only the suitability of a more clear vocabulary, but also the recognition of some limits of Chişinău 's diplomacy, which promised that RM will join the EU in 2007[11].

## 1.3. Federalization and its impact on Local Public Administration:

Launched on the 12th of February 2002 by President Voronin, the idea of federalization did not have much success among citizens. The project had been adopted by the OSCE Mission, which supported in the summer of 2002, in Kiev, a territorial reunification project of RM through federalization[12]. For 37,80% of the respondents of the Public Opinion Barometer the transformation of the Republic of Moldova in a federal state is unacceptable, 25,5% had no answer, and 13,10% answered: none of my business[13]. Comparing the data of the IPP Opinion Barometer with the IDIS Opinion Poll in the beginning of 2002 we have to mention the growing tendency of acceptance of the federalization project in Moldova. The firmest opponents to federalization were ethnic Moldovans (58%), men (54,3%) and people with higher education (68%). Ethnic Russians are more favorable to federalization, especially those from urban areas. Among Ukrainians we find the highest values of "no comment" (30%). As a rule, the perceived risks of a possible federalization of Moldova are connected with: the state dissolution (38,6%), worsening of interethnic relations (18,8%) and the transformation of Moldova in a Russian protectorate (12,8%).

According to the Kiev document, Moldova will be divided into federal territorial formations which will have their own constitution and legislation, and will have the same rights as the federal bodies. Russia, Ukraine and the OSCE are to be the guarantors of respecting the stipulations in the agreement; any other divergences will be solved through negotiations and direct consultations between RM and Transnistria, through the mediation of the guarantor states and OSCE. With certain hesitations, President Voronin finally supported this project, and asserted that federalization seems to be the only solution which can lead to the territorial reunification of the country. Yet, the chief of state mentioned that this project has to stress the asymmetrical character of the relation between the federal state and the federal subjects. He made it clear that he is not pleased by the principle of equality of rights applied for both subjects by the authors of this project. Although the government is in favor of federalization the-

re is a lot of resistance from the political opposition, most of civil society and many NGOs in Moldova, because this would not solve, but on the contrary, worsen the definitive settlement process of the conflict.

More specifically, the project can not be accepted for the following reasons. (1) The proposal actually disputes Moldova's legitimacy, but not of the rebel region, and any statute modification has to be based on the citizen's agreement and not as a result of a foreign power's wish. (2) The project means the loss of RM's independence as a sovereign and independent state. (3) The project was not discussed before hand either with the Parliament and political parties in RM, or with civil society and the Constitutional Court. (4) The project appeals to a federal democratic principle, without taking into account the presence of foreign troops on the separatist territory of RM, the presence of Russian citizens in Tiraspol's government who are encouraged to negotiate as if they had an international legitimacy, as a result of a foreign intervention. (5) The project excludes any possibility of a subsequent association to the EU for RM in the account of some illusory benefits as a result of the territorial reunification detached as a result of the rebellion from 1992. (6) The project begins from the false premise that the adoption of the new constitution could solve the dispute, while this can only legitimate the dictatorship of Smirnov, who from an offender (author of power usurpation in the region) will be transformed in a founder of a new state. (7) The project does not remove the public fear that, as a result of this federalization, RM will be transformed in a Russian protectorate, the constitutional authorities will have equal rights with the separatist government.

The document launched in the summer of 2002, did not pass unobserved by western states, which left it over to the officials from Chişinău to accept or reject the proposal. A study launched by the International Crisis Group sustained that the OSCE cannot be named the author of this project, because the mission only participated at the announcement. The text had been written by Russia and the Ukraine and remained to be a working document. Having been written by Russia explains why many articles of the proposal are integral copies of stipulations of the Russian Constitution [15(6)]. Also, the political settlement of the conflict can not happen without the full involvement of the EU[16], which could bring RM closer to democratic settlement standards and would solve the situation in which the mediator states actually defend the interests of a single subject: the secessionist region. Quoting Javier Solana, the author mentioned certain recent evolutions, which confirm the transformation process of the EU in a security structure, which will assume new responsibilities connected with the administration of security crises. The EU presence in settlement mechanisms would assure higher political pressure towards the mediators and would limit their capacities to make declarations, and then do the opposite. The public opinion on the position taken by the officials' from Chişinău and Tiraspol towards the federalization project of RM remained uncertain for a couple of months. On one hand, the Moldovan authorities anticipated the publishing of the OSCE project, launching in the state media the idea of modifying the RM's Constitution with the purpose to organize a Two Chamber Parliament which should contribute to a suitable representation of the territory, including settling in this way the Transnistrian conflict. An involvement of the EU should follow the next steps: setting up joint moldo-ukrainian custom points with the EU participation on the Transnistrian segment of the frontier, a juridical examination and political involvement and mediation in the process of elaborating the new constitution. The EU is important due to the important political and economical-financial levers to influence both the separatist government and the mediator states and it can guarantee the mechanisms of post-conflict guarantees.

On the other hand, after publishing the OSCE project the RM leadership avoided expressing its point of view, leaving this to the political opposition, which the governmental press criticized aggressively for rejecting the project. Also the attitude of the Transnistrian authorities became clear later. The fact that the agreement was supposed to have priority over the Constitution of RM, determined some of the leaders from Tiraspol to qualify the document as an international treaty that was supposed to be signed by the two sides in the conflict. It is sure that after the chief of diplomacy from Tiraspol expressed his positive attitude towards the OSCE project he fell in disgrace of the Transnistrian leader Igor Smirnov. Just before the OSCE summit in Porto, December 2002, the Moldovan and Transnistrian authorities had to officially express their attitude towards the OSCE project. It became clear, that, on the whole, neither the Moldovan nor the Transnistrian authorities totally accepted the stipulations of the project proposed by Kiev, except the agreement on the principle to solve the Transnistrian conflict through federalization. On February 14th 2003, President Vladimir Voronin published an agreement project which was to be signed by RM, Transnistria, OSCE and the guarantee countries. The document stipulated: the formation of a joint moldo-transnistrian constitutional commission which had to elaborate a new Constitution on the basis of the federalist principle proposed in the OSCE project; the organization of a referendum for adopting the new Constitution and the organization of elections on the whole territory of the country in the new constitutional structures before February the 25th 2005.

President Voronin scheduled the main stages, estimating that a month would be needed for the formation of the joint commission, about 6

months for the elaboration a new constitution, and about 2-3 months for the international examination and public debates on the constitution as well as a few months for organizing the referendum on both banks of the Dniester. In this timeframe the new constitution would be adopted before February the 1st 2004. In his turn, Igor Smirnov launched on February the 28th 2003 his own agreement project which proposed, theoretically, a series of similar concepts with those contained in President Voronin's project, including the terms of general elections, the future federal structures, but with a single essential difference – it did not invoke at all that the agreement had as a basis the principles from the OSCE project of July the 3rd 2002. From the OSCE project only the notion of a „federal state" was used. This showed again the fact that the Transnistrian leaders rejected the stipulations of the project launched by OSCE and will insist on the variant of „contractual federation", which is in fact a confederative one.

Numerous cultural celebrities, public figures, and politicians declared themselves vehemently against the federalization project imposed on Republic of Moldova by foreign powers. The President of the Constitutional Court, Victor Puşcaş, declared that the present Constitution is good enough for bringing in other stipulations regarding the territorial autonomy. Appeals of international experts show that the current Constitution[17]does not have to be changed, specifying that, in legal terms a mechanism of canceling the current constitution does not exist, even through the adoption of a new Constitution. This makes it clear that the whole initiative centered on a new constitution runs counter to the current constitution. Obviously, the sides of the conflict did not ignore the active discussions in the international press and in Moldovan society. The Ministry of Foreign Affairs of the Russian Federation strongly reacted specifying that EU implication would complicate the existent process of negotiations and that, any other changes of the present format should be made in a consensual way, that is with the agreement of each side. This is an unacceptable condition, as neither Russia nor Tiraspol would ever accept the widening of the pentagonal format after they assured in 2000, through the official inclusion of Transnistria in the group of negotiating parties, a faultless tandem with invincible results in any situation. The same declaration mentioned that international peacekeeping forces were unwanted because „Russian peacekeeping troops assured the ceasefire from July 1992 till now in a stable way", any change of this format could attract unwanted consequences. Few could imagine that in a situation in which public opinion does not seem to be favorable to changing the state structure, the authorities still continue to promote the federal solution. In the middle of November 2003, the opposition comments on a new document launched by the Russian Federation, entitled the Kozak Memorandum. In this memorandum Russia had already negotiated with both sides, Moldova and Transnistria, who had already agreed to sign with the definite purpose of establishing a mechanism to delegate the competences in the frame of an asymmetric federation. More than that, the second day, according to the Russian official, Dmitrii Kozak, the Memorandum was to be signed in the presence Vladimir Putin, who was to arrive immediately in Chişinău.

The Declaration brought about a real shock in the public opinion in Moldova and for the Western states, because in spite of the declarations of the Russian official, neither the OSCE, nor the European Council had been consulted beforehand over the text negotiated by Russia. However the signing of this Memorandum would have changed essentially the tone and the agenda of the debates of the OSCE Summit in Maastricht, on December the 2nd 2003. The first reaction of the opposition was to ask the chief of state for explanations on the origins of this secretly negotiated document, demanding Voronin to reject it. Not receiving the expected answer, all the political parties except the CPM launched street protests, culminating with burning the flag of the Russian Federation, the government's resignation and the convocation of the anticipated elections. Hundreds of protests, declarations and appeals came to the address of the Parliament and the international forums. This showed an extremely active mobilization of civil society against the solution proposed by Russia [18].

The text of the Memorandum and the comments launched by D.Kozak in Chişinău and Tiraspol, were, secretive over the way in which the Russian officials see this process and, in their turn, insist that, the memorandum also had the mission to solve the acute problem of Russia's „international image", before the Maastricht Summit. On the other hand, the document handed recently to President Voronin can not camouflage the feeling that it is written, under the dictation of the separatist leaders and has the role to press the authorities from Chişinău to accept elements that do not go well even among the most doctrinaire parts of the CPM. The Memorandum contains the renunciation of the „principle of equality of the federal parts" and the „contractual federation"(promoted flamboyantly by the leaders from Tiraspol). It used the expression "asymmetric federation", recently proposed by Voronin, but proposed a model which does not seem either viable or productive for future elections. In the document the Russian model establishes only Transnistria and Găgăuzia as subjects of the future federation, the rest of the territory is named „a federal territory", without an autonomous legal status, and under the influence of the two subjects of the federation. Apparently, the Russian Federation seems to renounce its obligation as lead actor of the peacekeeping operations in the

secessionist region, but this is actually because it follows the demilitarization of the whole country. Situated between a rock (Moscow's pressure) and a hard place (the protests from the opposition but also from the West), president Voronin announced at the end of November that he would not sign the Memorandum and immediately after which followed allergic reactions from Moscow and Transnistria. As a result of not signing the Memorandum, the officials from Tiraspol announced that they will toughen their position at the negotiations[19] and stated it would resort to economic penalties asserting that, in this way, the officials from Chişinău „lost their historic chance to reunite the country". A brief analysis of the memorandum is needed to establish if this historic chance actually existed.

The Memorandum actually legalizes the conservation of the Transnistrian "war elites" in the Transnistrian government. This happens through: (a) The confirmation of the executive power's legitimacy in Transnistria (art.14.6), (b) the formation of structural powers in the region exclusively on the federal laws („until the adoption of these laws, the executive power in Transnistria exerts power, according to the existent legislation"); (c) keeping the integrity of the current electoral system of Transnistria and the standards which settle these activities; (d) imposing a long unjustified transition period (art.14.11, 14.12, 14.13) until 2015; (e) the absence of recognition of the way through which the electoral procedures operate through which the current Smirnov government rules the region.

More than that, articles 3.13 and 3.14 explicitly contain „the right to secession" of the RMN. Even though the motives for exerting this right are not explained, neither are the procedures and conditions for adopting this decision by the subjects of the federation. The Memorandum does not make any difference in the relation between the secession procedure and the authority of the federal centre, nor does it define a hierarchic relation between the federal centre and its subjects. In spite of the stipulations of article 3.3., where it is said incidentally that „the federation's constitution, the laws and the normative documents adopted by the federal authorities, have an application power and are compulsory on the entire territory of the federal state", the project does not contain any other stipulation which can enforce this hierarchical character of the federal legislative – normative settlements over the actions of the subjects. There does not even exist a phrase, which gives priority to the federal Constitution in relation with other sub-national constitutions. These are totally neglected in the mediation procedures in case conflicts appear between the federal center and its sub national subjects, also there are no mechanisms stipulated of federal constitutional auditing over the power structures of the federal subjects. The necessity of the existence of an institution of the federal government at the level of the federal subjects is even neglected! At the same time, the possibilities of the legal organs of the federal subjects in solving the general-federative problems, in relation with the attributions delegated to the federal centre are exceptionally high (art.7b and 7e), stipulating several domains in which, „the juridical settlement of the federation's attributions are defined through… some laws of its constitutive subjects and, more than that, even through delegation of some federal competences to its subjects, for this purpose supplementary financial resources should be allotted from the federal budget.

The description of this model follows a reverse logic. The subjects of the constitution are stronger than the federal state. The law that the subjects can make actually represents the skeleton of the state structure. This model is indeed asymmetric, but its asymmetry is of a centrifugal nature, causing doubts over the viability of this kind of political system, constructed on scattered institutional entities, marked by conflicts still going on after the conflict of the 1991-1992, and which can not be solved through traditional federal models. The trials to settle several organic competences of the federal centre (art.4 and 5) seem absurd. Through these trials the federal subjects are supposed to take care of the custom system, of the activity of the federal Central Bank and even money printing. Also odd seems to be the aspects connected with the functioning of the federal state. Thus, proposing the demilitarization of the Republic of Moldova, the authors of the text exclude (art.4 and 5) „ensuring the state security" from among the federation's attributions and the common competences –attributing it to the federal subjects and placing it corresponding with the art.6.14 from the heading „other matters".

The superior status of the federal subjects in relation to the federal center is confirmed through the hierarchy of the normative documents that normally settle common issues: they are raised to the rank of organic laws, contrasting with the laws adopted by the federal centre which are just „common laws". The stipulations of art.10a and 10b do not make any difference between these types of laws, which undermine the hierarchy of the normative documents and the elementary juridical order. Formally the Memorandum announces the asymmetric character of the federation. The formation mechanisms of the public authorities in the federation, as well as the distribution character of the attributions between the 3 levels (federation's competences, joint competences and the federal subject's competences) seem to make the term asymmetry seem like a soothing word while the subjects are able to subordinate the federal centers and the "federal territory".

This asymmetry is thoroughly different of the „asymmetry" proposed by Voronin. The Kozak Model can be described in the following formula: the federal subjects are state formations with a large spectrum of rights and sovereign attributions, while „the federal territory" is just a common territory, without personality, which could be exerted by oneself, situated in the subordination (p.3.4) of federal organs and the „competence of the federal subjects". Thus, Transnistria and Găgăuzia have the right to full and unlimited autonomy with a view to solve their specific problems, based on of the laws and its autonomous documents, exerted in a sovereign and guaranteed way by the federal legislation. However the "federal territory" may solve these problems by federal laws, adopted through the Senate (half of which is composed by representatives of the subjects), through the executive federal organs, created also with the large participation of the representatives of the whole federation (the confirmation of the government by the Senate) and a president, also elected by the population of the „reintegrated" state. In this way the population of Transnistria and Găgăuzia has a strong legal status, has their own sovereignty and independence, while the population of „the rest of Moldova" has no special status and is treated together with the inhabitants of the two subjects. The federal subjects have the right to a real form of self-government, in which the inhabitants from the rest of the country do not have the right to intervene. However the „federal territory" (that is Republic of Moldova, except the territories controlled at the moment by the secessionist Transnistrian system and the territory belonging to the Găgăuz administrative-territorial autonomy), could not dream of such political autonomy because the problems of its administration will be determined solved only with the involvement of the citizens of Transnistria and Găgăuzia. More than that, in the period 2015-2020 (art.14.11 and 14.12, 14.3), the decisions which will concern the federal territory will be taken with the majority of votes of the representatives of these two federal subjects. Through these issues it is clear that a true integration will not take place. However the framework proposed in the document gives more influence to the ideology of Transnistria and Găgăuzia .

The asymmetry proposed in the memorandum gives advantage to the federal subjects over the „federal territory". This is also contained in the normative legislative settlement system of the future state. Although art.10b stipulates that „the laws of the federal territory are adopted by the House of Representatives with the simple half of votes and does not have to be confirmed by the Senate, the organic federal laws, which settle the common attributions sphere have to follow the complete confirmation procedure. In this way the juridical field of the federal territory, in all matters connected with its intern problems; can derail very easily by changing the power relations between those 71 deputies of the lower Chamber of Parliament, in advantage of Transnistria. Unlike the „federal territory", the federal subjects have not only the Constitution but also their own laws are visibly extracted from the constitutional field of the federal state, which are not liable to any auditing or settlement from the federal center. Thus they have a superior degree of protection in all the matters connected with the adoption of normative documents and the decisions that belong to common competences. Taking into account, the fact that, at adopting the laws and decisions on any problems of federal competence, the subjects play a very important role (especially in the period 2015 and 2020!). The rest of the territory will obtain a legislative juridical frame, which prints from the start a complete functional weakness of the federative center, in comparison with the juridical system of its subjects. The Senate, formed from a certain numbers of representatives of the federal subjects, will have a decisive role in the legislative process of creating the executive structures, even if the House of Representatives will meet a rather fair number of deputies, proportionally elected by all the population of the federative state, thus assuring a larger representation of the federal territory.

According to art 12.6, the federal government is confirmed by the Senate. The federal government forms the Supreme Court and the Constitutional Court; this means that there is a certain asymmetric degree in the constitutional guarantees of the future federation. While the federation subjects have many guarantees which protect their status, including the right to secession, the "federal territory" does not have any guarantees in this sense. The asymmetry of foreign policy: the subjects have large prerogatives in fulfillment of their foreign policy activities: from the possibilities to develop foreign relations, signing international agreements to the obligation of consulting the federal subjects regarding the stability of foreign relations and agreements including in the domain of common prerogatives. „The federal territory" is deprived of this type of political and moral possibilities. Formulation of foreign and economic foreign policy is limited just to the activities of the federal organs. However the federal government takes into account the wishes of Transnistria and Găgăuzia thus not giving a voice to the "federal territory". The asymmetry of budget and financial matters. While according to pp.8a and 8b, the budgets of the federal subjects are formed on the account of its own taxes, collected incomes and even subsidies transmitted as a result of the federal taxes, etc, the financial administration of the „federal territories" can take place only on the ground of local taxes, and some required parts of the federal budget because, according to the stipulations contained in the Memorandum „the federal territory" does not have its own budget!

In the same situation is the country's property. The subjects have complete sovereign competences, while the federal territory must comply with general-federal legislation adopted with the participation of, and taking into account the subjects' interests, deprived of real possibilities to exert its own interests. The federal subjects will have the role of monopolists over the property of the future federation situated on their territory. They will also be able to take supplementary measures to transmit property in the federal territory's „interest". We can conclude that, under the guise of this „asymmetric" Memorandum an exclusive statute for the federation's subjects is assured, with fundamental rights and royal attributions over the federal center. This will give the possibility to the separatist leaders to obtain „a dream" position in the structure of the future state. At the same time there is a total absence of rights for the rest of the federal territory, creating a specific formula of „ federative apartheid", in which the largest part of the population of the future federal state, could be deprived of all the elements of self-government, being fully dependent on the laws and the adopted decisions under the dictate of plenipotentiary representatives of the federal subjects.

This situation can be created in an institutional context totally inappropriate for representative democratic principles and the values of the state of law. For example The House of Representatives (constituted, according to the art.9b, on the basis of proportional electorate system, in a single electoral rayon). Taking into account the big number of supporters of Transnistria and Moscow from the right bank of the Dniester, that is on the „federal territory", it is expected that the philo-russian parties will obtain a considerable advantage which would permit them to penetrate more easily the House of Representatives. In this case, the possibility of the formation of a powerful pro-Moscow coalition in the Senate as well as in the House of Representatives will seal the geo-politic orientation and the stability of the political system for a long time. The stipulation of art. 9b describes the Constitutional methods of the Senate's components where the exponents of the federal subjects will dominate also through those 13 proper senators and, probably, a good part from the number of the other 26, elected from the rest of the federation, but which, as a result of the opportunism from the last political changes could have views influenced perceptibly by the hegemonic role of Transnistria in the frame of the new federative structure. Even in the ideal case, if 13 senators elected from the rest of Moldova will be perfectly patriotic for their own electorate, about 50% from the total number of the federal subjects' senators could block anytime decisions and laws unacceptable to Tiraspol. Let's not forget that, in the new federative format, the Senate will have extremely important duties in exerting the federal state power. The principles exposed in the stipulations of the art.12b, which define the duties structure of this political organ, determine it to become a powerful organism checked by the federal subjects, and their political ambitions will be reflected over the federal center. The same principle of the prevailing of the interests of the federal subjects are also observed in procedures (art-13.1 and 13.2) of the formation of the judiciary organs of the federation.

Through these mechanisms the Memorandum proposed by the Russian Federation actually assures the „majority actions" of the federal subjects, which could easily block the federal center's decisions as is the current situation. The establishment of such a system is indeed, very asymmetric, but also very curious and internationally unprecedented. The federal subjects will have almost unlimited possibilities in dominating over the federal organs applying the federal competences for promoting their own interests and influencing those state decisions which will be most convenient to the political elites, as was the case when the secessionist region was supported from abroad. Following this formation principles of the federal power organs, the representatives of the federal subjects will in fact have unlimited powers to block and paralyze the activity of the newly created federation. This will condemn the federal center to long and systematic crises (probably similar to the power struggles felt between the federal center of the Soviet Union and the republics before the collapse of the Soviet system). It is expected that with these conditions Transnistria and Găgăuzia will find perfectly legal and internationally recognized methods to disintegrate the newly created federation and guarantee secession.

According to the stipulations of art.3.6. „The constitutional-juridical statute and the territorial boundaries of the federal subjects can not be modified without their consent". Also unequal is the distribution of the constitutional prerogatives and guarantees, conceded to Transnistria and Găgăuzia in relation to the „federal territory" (which is not an autonomous subject and, that is why, it is deprived by the guarantees mentioned above), this short stipulation prepares the ground for a new military conflict between the population of the „federal territory" „today, the de facto territory of Republic of Moldova) and the military troops of Transnistria, or it places Republic of Moldova in a degrading situation. Let's not forget that, according to the declarations of the separatist government, RMN owns the control over not just the localities from the left bank of the Dniester (except the villages situated under the jurisdiction of Chişinău), but also over the town Tighina (Bender) and over some localities on the right bank of the Dniester, which are not be controlled by the separatist authorities (Varniţa, Copanca). If we follow the meaning of these stipulations the result is that these territories should naturally be

„transmitted" to the federal Transnistrian subject. This would bring about a new armed conflict situation in the region, or unjustified yielding on the part of Chişinău which will not be accepted by these localities.

Completely against the national interests of the Republic of Moldova are the stipulations of art.14, regarding the transitory phases of the document, from the unequal distribution of the contributions in the federal budget (Transnistria would have about 1/3 of the Senate's members and exclusive rights to the delegation of its representatives the formation of the federal executive powers). Art.15 is also unacceptable. This article regards the rule and the adopting principles of the future federative Constitution, regarding the proceeding of separate vote counting in the Republic of Moldova and Transnistria. Besides the disrespectful character of the idea of electoral country reintegration on separate grounds, this idea of separate counting seems to take into account certain internal plans and obvious, safety measures necessary to the secessionist government for controlling the electorate segment of the region. This procedure could condemn the adoption process of the federal Constitution to the acceptance of two possible variants: either the adoption of a Constitution which entirely serves the mercantile political interests of the secessionist leaders from Tiraspol, or the rejection of this Constitution and the failure of the entire action „international guaranteed", the failure also serving for strengthening the positions of Tiraspol.

The adoption corresponding with the stipulations of the art.3.7, states that the official language of the federation will be Russian, with the guarantee of maintaining this statute forever, due to the impossibility to revise the Constitution (p.10d), if the Transnistrian subject does not agree with this.

Proposing the demilitarization of Moldova without the necessary guarantees for the implementation of the agreement seems to assure a special and important role to Moscow in this stage of transition to the new federal state. Moldova will be demilitarized step by step; and then someone will have to assure the guarantee of this process and the inviolability of the federal state, eventually, „against some foreign states". In this context, colonel L.Ivashov, the representative of the defense minister of the Russian Federation, stated that: „the adoption of the Memorandum will require not just maintaining the level of Russian troops in Moldova, but also increasing the level". Respectively, the demilitarized statute of Republic of Moldova is necessary to block the cooperation of RM with NATO and with the defense structures of the EU. On the other hand, the purposeful difficulty to modify the Constitution (the procedure of modification with only 4/5 majority of the Senate's, concedes to Transnistria almost unlimited possibilities to block any changes which it considers unacceptable) make impossible any type of cultural, economic or political integration with Romania of any of the subjects, let alone the „federal territory", not even speaking of the right to secession guaranteed to the federal subjects in this case.

# II. Local Autonomy and the Process of Decentralization in Moldova in 2003

The system of local public administration introduced at the end of 1998 did not have time to demonstrate its positive and negative aspects, because already at the beginning of 2001, the newly elected government declared the system "failing" and "faulty" and that it would soon be replaced with the old system, although questionably named „traditional". The local authorities of RM as well as the CLPR experts experienced some very unpleasant moments when the political authorities from RM avoided consulting them in every possible way concerning the planned reform. This started with limitation and censorship of the public debate in the official press and ended with the authorities not publishing the draft law on local public administration. After the first reading the law was adopted, however the parliamentarians had only fragmentary knowledge of the reform that had already started in November 2001.

On the whole this „vision" contained too few new elements for it to be treated seriously by civil society and the opposition. Keeping this in mind a juridical formula appreciated by some experts as „hazardous" proposed the revision of the elements, principles and instruments needed for the duties of local public administration. The authors of the law proposed the dismantling of the entire system of local competences, the structure of sub-national centers and the government's territorial offices (prefectures) installed in the rayons through reinstalling an old model, which existed before 1998. However this time in a radical-populist formula, phrased as: „bringing the administration to citizens". An analysis of the structural deficiencies of the law was also made in the report of an expert from the Congress of Local and Regional Power of the European Council, Prof. John O'Louglin[21](10).

The changes that were produced can be considered a combination of what was happening already until 1998 with some elements of administrative decentralization, the local autonomy was just the scenery of the public administration system. After the local elections in May 2003, during the Conference „The Process of Decentralization in Moldova: Recent Events and Future Tendencies" organized in Chişinău on the 8th and 9th of July 2003 by the Congress of Local and Regional Powers of the European Council, the state authorities admitted some mistakes in the legislative framework of local public administration. They promised that the legislation would be changed according to the stipulations of the European Charter and would implement the recommendations made by the European experts. Following the recommendations of the conference a serious nationwide discussion was supposed to have taken place discussing efficient mechanisms to increase the efficiency of local public administration. Regretfully, this has not happened so far, except for some insignificant modifications of the legislation. The system of local public administration practically remained the same, with inefficient institutions and mechanisms, and many gaps. In general local public administration became weaker, lacking coherence and became more dependent on the central authorities than before the reform. To demonstrate this, we propose to follow some practical aspects of the territorial administrative system, accompanying them with reflections and the analysis of this domain.

## 2.1 The impact of the new LPA legislation:

Returning to the rayon's did not make a positive difference on the citizen's perception in 2003. In November based on the results of the Public Opinion Barometer[22](11) around 47,5% from the respondents considered that the level of public services remained the same as in 2002. The position of local public authorities also remained unchanged, in the public opinion (40,6%), while 34,8% could not give an answer to the question. The most profound impact the return to the rayons had on the public administration system was its psychological effect on the civil servants and mayors. There is a stronger tendency to find solutions to local problems at the central level than at the local level. Quite quickly it has become normal that the central government gives indications and establishes targets for local governments. Instruments for achieving this are the frequent visits in the country by parliamentarians who remind local authorities of the obligations to serve their party's interests.

Initially, the implementation of law nr.764-XV and Law nr.781-XV was suggested for spring 2002 at the same time with the organization and the anticipated date of local elections. In concordance with the Constitutional Court's

Resolution nr.10 from February the19th 2002 „For the constitutional control of the Parliament's Resolution nr.807-XV from February the 5th 2002 „Regarding the establishment of the date of local elections" the local elections were postponed until May 2003, and the implementation of the nominated Laws was suspended, too, until the spring of 2003. Law nr.764-XV (27th of December 2001) and Law nr.186-XV (November the 6th 1998) with the modifications and completions were constitutionally controlled (the Resolutions of the Constitutional Court nr.71 from December the 21st 1999, nr.12 from March the 5th 2002 and nr.13 from March the 14th 2002). As a result, certain stipulations from the law regarding local public administration were declared unconstitutional, and the law regarding the territorial-administrative organization of Republic of Moldova was recognized as constitutional. Considering this, the absence of an articulate conception over the benefits of returning to the old rayons and the absence of public consensus over the reform stimulated protest and tension in society. Without undermining Moldova's authority to promote its own territorial reform, the CPLRE underlined several times that it regrets this reform, because it greeted and actively encouraged the territorial reform of 1999 as a positive step to a true regionalization of the country.[23]

On March 18th 2003, the Parliament of the Republic of Moldova adopted a new Law regarding local public administration. On the whole, the law from 2003 as the one from 1998, develop in the first section the constitutional principles settled by art.109 which establish that the public administration in the territorial-administrative units is based on the principles of local autonomy, decentralization of public services, of eligibility and consulting citizens' in local problems of special interest. Art.3 from the Law reproduces the constitutional settlements, and in the second paragraph of the article mentioned establishes that the authorities of local public administration have financial autonomy, the right of initiative in issues regarding the administration of local public problems, implementing the conditions of the law, the authority in the limits of the administrated territory. Art.4 of the law stipulates that the territorial-administrative unit is a legal entity of public right and dispose a patrimony in conditions of the law. Art.6 settles the relations between the central and the local government, as well as between the authorities of the first and second level. These relations have as a basis the principles of autonomy, legality, transparency and cooperation in solving common problems. However this law repeated the systematic errors of the old legislation. The reform of local autonomy has remained at a level of empty declarations; the competences given to the local public authorities have not been covered with enough financial resources and the absence of the prefect institution which was repealed makes that the relations between the authorities of the first level and second level has turned into a relation of subordination.

Art.5 determines the local councils in villages and towns as legislative authorities and mayors as executive authorities in the process of local autonomy. This paragraph does not determine the quality of the subject of local autonomy or the rayon council; the authors of the law simply reproduce art.112 from the Constitution entitled: „The village and town authorities". This article determines the status of the subjects of local autonomy as the local councils and mayors, referring only to the village and town authorities. But art.109 of the Constitution says very clearly that public administration in the territorial administrative units is based on the principles of local autonomy, decentralization of the public services etc. So, we have to understand that these arrangements also apply to rayon councils, as a rayon is also a territorial administrative unit.

The avoidance of the implementation in the new Law regarding local public administration can create the impression that the rayon authorities do not work autonomously. The principle of local autonomy does not refer to them. The relations between the rayons and the central authorities are not relations of cooperation but subordination.

According to this resolution the government does not have prefects in the territory as direct representatives. To keep influence in the region the government may try to let the rayon chiefs do the same work as the prefects under the old system, thus taking local autonomy away from the rayons.

An important part of the law is that the arrangements regarding deconcentrated public services have disappeared from the text. Only in the first article - „Essential notions" – it is explained that deconcentrated public services are under the subordination of the central administration. These services are situated in the area of the territorial unit. The definition is correct, but the law does not specify who is in charge of these deconcentrated services or what the relation is between the deconcentrated services and the local authorities. Obviously, these services are not under the subordination of the rayon chief, who is responsible to the government for the administration of the rayon. This explains why in art.60 which settles the main competences of the rayon chief, the deconcentrated public services are not mentioned. There is no definition what competences the rayon chief has over these services, who coordinates the services or who is in charge of the services. Neither is there any text what are the relations with the ministries and departments or is it defined what the responsibilities are of the services towards the rayon authorities.

The problems of the public authority's competences remained without many changes regarding the decentralization mechanism of

public services. At the round table, which took place on the 22-23rd of October 2003 with participation of government representatives, the Parliamentary Commission for local autonomy, as well as the experts of the European Council, the conclusion was that fair and efficient distribution of the competences and responsibilities in local public administration remains a difficult problem for the central authorities, and is still not clarified by this law. Thus, as in the old law, in the new law of local public administration (March 2002), instead of „delimitation of the domains of activity" the formula of „delimitation of competences" was kept. This does not solve the problem of legal confusions and inevitable conflicts between different levels of authority. Art.10 resolves the competences of the territorial units at the first level, and art.11 resolves the competences of the public authorities of the second level. Such a settlement will inevitably lead to some overlap, not of competences but of activities. The competences of local public authorities are settled in other articles, such as: art.18, settling the competences of the local council, art.34 – the mayor's competences and art.49 – the competences of the rayon council.

The innovation introduced in the law relates to „the delegated competences", which actually does not constitute a violation of the rights of local autonomy, but an explanation of the juridical relations between the central and local administration. The European Charter contains specific stipulations, in art.5 (pt.5) regarding the situations through which „the delegation of competencies takes place by a central or regional authority, the local public administration authorities have to benefit, as much as possible, of the freedom to adapt their action at local conditions". The delegation of competences was not done in a correct way, because the main law of the local public administration has to stipulate the possibility of the rayon and central authorities to concede, if necessary delegated competences, with the necessary financial resources for covering the cost of competence duties. There is a big difference between obliging the local authorities to fulfill the tasks of the state policies, and setting up favorable conditions (including financial, material, juridical, etc.). Through which, exerting these functions can mean a benefit for the authorities having a juridical autonomous personality.

The fact that these delegated competences were, from the start, introduced in the main law and unequally distributed between the communal, city, and the rayon councils makes us believe that the legislation went on a wrong path. Many of these competencies are closer to deconcentrated public services thus its administration should be done by the government's representatives in the territory and not by the local authorities. If the law has given local authorities certain competencies, then in the same law means should be established how and where the local authorities should present information on the achievement of their goals etc.

In case the law conceded these competences to the local authorities the controlling authority should also have been established. For example to whom should the information regarding the quality and the extension of fulfilling these tasks be presented, where do monthly reports on the fulfilled tasks go, establishing – respectively – a new subordinate relation between the authorities (central and local). This represents a major juridical blunder, and a violation of the European Charter, (i.e. of the concept of local autonomy specified in art.3 pt.1., about „the right and the effective capacity of the LPA authorities to solve and administrate, as part of the law, in a proper name, and in the interest of the local population, an important part of the public problems").

Numerous competences delegated to the local public authorities of the first and second level cancel, in fact, the autonomy and cooperation relations settled by the Constitution of Republic of Moldova, subordinating the local authorities (the mayors) to the rayon chief. Thus, through art.12 the delegated competences for the authorities of the first level are resolved: such as: civil protection, maintaining the public order, the military administrative activity, the protection of natural resources etc. The same competence through art.13 is delegated to the rayon authorities: civil protection, maintaining the public order, the military-administrative activity, the social protection of the population, the protection of the natural resources etc. This creates a conflicting frame which can bring about authority conflicts and abuse, through creating subordinate relations between two levels of autonomous levels, if we quote from the local public administration law.

The central authorities, through the stipulations of the law reserved the right to affect the procedure of administrative control regarding the opportunity of using the allotted resources and the undertaken actions, which is a natural thing in case the local public authorities are allotted supplementary resources from the national budget for the administration of the delegated services. The new law has been applied from the 25th of May 2003, immediately after the local elections, and the financial resources for the delegated competences were not earmarked in the strengthened budget for the current year, and respectively, hasn't been transferred to the local collectivities until now, which doubts the present verifying and supervising mechanism of fulfillment of the „delegated functions" of the local authorities.

A more serious problem is, who is the competent authority which should assure reliable guarantees against interference by the authorities, or against the attempts to demand from the local authorities the fulfillment of duties that are not covered in the budget. In this area, the

law does not give a conclusive answer, which makes us believe that the „the competence delimitation" is more a trick, blocking out in fact, the transfer of competences to the local level without transferring adequate financial resources for these competences. We have to mention that the return to the old rayons did not introduce an active invigoration in the territorial-administrative units. And we are not sure that the populations from the rayons feel the benefits of this change. One thing which was achieved is the closeness of the bureaucratic apparatus to the citizens. For demonstrating the reduction of the bureaucratic apparatus a completely inappropriate action has been set up in the villages and the mayoralties of the communes. The positions of the court clerk, expert for sport and youth, and expert for military evidence have been cut. The wages of the survey engineer and the tax collector positions have been halved. As a matter of fact, from the mayor's apparatus only the bookkeeper and the commune's secretary remained unchanged. Paradoxically, through this we can assert that the public administration did not get closer to the citizens, but went further away.

## 2.2. The May 2003 Local Elections:

The organization of the local elections of this year coincided with the territorial-administrative reform and the main laws for the functioning of local public administration, modified in March 2003 as a result of the recommendations made by the CPLRE experts. The rush with which the authorities adopted the new laws caused political tension with the political opposition and civil society, but also raised uncertainty with the citizens towards the stakes of the ballot. In addition to the replacement of the officials of the regional authorities (from 10 judets to 33 rayons) also new mayors and councilors had to be elected at the local level due to the raise in the number of communes from 644 to 898. These territorial-administrative modifications increased the political instability in the country as well as the uncertainty for the locally elected officials. The citizens had to vote for 898 new mayors and for 11,935 councilors at the local and regional level. For the local elections of May 2003 (organized for the third time since 1990) there were 47,265 candidates from 11 political parties, two electoral blocks had been registered and there were 1,544 independent candidates (including 723 who ran for mayor). The international and local observers[24] mentioned serious incidents in their reports, and noted that these elections were a step back from the elections of 1999.

There were numerous cases of intimidation of opposition candidates and the supporters of some non-communist parties;

- Restraining and even arresting some candidates running for mayor;
- Unequal reflection of the campaign in the printed and electronic state media;
- The application of pressure on journalists;
- Interventions in the electoral campaign by government officials;
- The use of public means for the benefit of the candidates of the governing party.

As a result of the local ballot from May-June 2003, the CPM accumulated 367 of the 892 mayor mandates, or 41,14%[12], becoming the statistic leader of this ballot. The CPM obtained 47,89% of the councilor mandates in the rayon and local councils. According to the CEC communiqué from the 11th of June, the Democrat Party accumulated, as a result of 2 ballot tours, 72 mandates (8,07%); ASL "Moldova noastră" - 189 (21,19%); The Democrat-Agrar Party - 18 (2,02%); the Socialist Party - 3 (0,34%); The Popular Christian Democrat Party - 20 (2,25%); The Professional's movement "Speranţa-Nadejda" - 3 (0,34%); The electoral block PSL-PSD - 43 (4,82%); The Socialist Party - 2 (0,22%); The social-political movement "Ravnopravie" - 2 (0,22%); The Centrist Union - 17 (1,91%). Independent candidates obtained 156 mandates for the position of mayor (17,49%). CPM is followed statistically speaking by ASL "Moldova noastră" - 20,05% and 21,1%; The Popular Christian Democrat Party (PPCD) - 8,89% and 6,6%; the electoral block PSL-PSD - 4,44% and 4,9%; the Democrat Party (PD) - 7,69% and 8,9%; the Democrat-Agrar Party (PDAM) - 2,6% and 2,7%; the Socialist Party (PS) - 0,2% and 0,1%, the Professional's Movement "Speranţa-Nadejda" - 0,18% and 0,2%; The social-political "Ravnopravie" - 0,85% and 0,3%; the Republican Party (PR) - 0,08% and 0,1%; the Centrist Union (UCM) - 1,59% and 1,9%; the independent candidates - 5,54% and 7,5%. The social-political movement "Forţa nouă" and the Socialist Party will have representatives only in the village and the city councils.

As a result of the detailed examination of the intimidation cases of the candidates and the violation of the citizens' electoral rights, the international observers could ascertain that the Electoral Code's Principles were violated. Especially with regard to the principle of equal chance and the free will of the voters (par. 2-3 of the Code of good conduct in elections) (par.3-1). Based on detailed observation of these elections, the Delegation proposed:

- The close monitoring of the evolution of local and regional democracy in the RM, including recommendation 110 and resolution 132;
- The exact validation of the election results by the court;

- Following the recently adopted legislation in the European Charter's spirit;
- Analyze the reviewed Electoral Code; necessary due to the many modifications concerning ballot secrecy and the electoral means used by the candidates and parties;
- The training of newly elected officials, taking into account their large numbers;
- Supplying assistance for the implementation of new legislation in LPA.

The confirmation of the new local authorities in their elected functions court decisions did not end political rivalries. For example the city of Chişinău, whose statute suffered certain changes in August, as a result of disappearance of the Mayoralty and transmitting to the City Council the competences which previously belonged to the Mayoralty confirm the continuation of the inter-party rivalries through other means than the electoral ones. We should mention that in the middle of the year after the local elections from May – June 2003, the City Council of Chişinău remains a difficult structure and is hard to administrate. The contradictory party interests go to extremes for the adoption of decisions, the defining of the agenda with problems settled to discuss the appointment of the sector pretors and the chief of the city sub-divisions). The CPM faction demanded, after they installed 2 of the 4 vice-mayors, at least 2 pretor positions of the 5 sectors of the capital, but also leadership positions in many departments and city directorates. After the new law regarding local public administration entered in force (March 2003), the mayoralties were dismissed as decisional organs, all their competences were delegated to the local councils, which are thus obliged to examine not only matters regarding the strategic development of the locality, but also minor problems like certifying the ownership right to rent a room.

Taking into account the intricate problems which have to be solved by the council of Chişinău (over 1 million inhabitants together with the localities included in the city limits), it is obvious that the City Council's task can hardly be accomplished in these conditions. On the 1st of December there were around 3,463 demands from economic agents and citizens on the agenda of the City Council. If these demands were not examined it could lead to legal action under the Law regarding Petitions, for damages and time wasted by the citizens. As there is an equal balance between the CPM and the rest of the councilors (who set up a faction called "democratic Chişinău ) political activities have been paralyzed in the last months. The only decisions which could be adopted were those agreed to by the councilor of the social-political movement „Ravnopravie", who declared that he will vote only in „the interest of the citizens", meaning in fact the available assets for various deals with the rival factions.

## 2.3. The State of Financial Autonomy:

After all, the new law regarding local public administration has not brought radical changes to the strengthening of financial autonomy. As in the old law it is stipulated that the authorities of local public administration have the right to their own financial resources, proportional to their competences, to use freely in the interest of the local collectivity. These financial resources of the municipality come from local taxes which completely remain in the municipality, as well as from special means earned through public institutions which ensure the normal functioning and the performance of paid services. According to the Law regarding local public finance the budgetary system of the territorial administrative units is made up from two levels. The Ist level is made up by the budget of: villages, communes, towns and municipalities the IInd level is made up of the budget of the rayons, the territorial administrative unit Găgăuzia and the Chişinău municipality. The incomes of local public administration (the Ist level budgets) are constituted from: (1) the own incomes that completely remains in the locality; (2) special means; (3) deducts from the general state incomes; (4) transfers.

The incomes and expenses of the territorial administrative units are earmarked for each financial year in the respective budgets approved by the local rayon councils and the municipal council of Chişinău under the conditions of the law. The budgets of the territorial administrative units: villages, communes, towns, municipalities, and rayons constitute indispensable elements, which are elaborated, approved and executed in conditions of financial autonomy. Incomes are earmarked for each budgetary year. The annual expenses of the budgets are approved in the limits of the available financial resources. However the decentralization process in RM was implemented through the decentralization of the public services without following a real decentralization of the financial resources, including the lack of capacity of the newly formed local public authorities to fulfill the obligations stipulated by the legislation. In the last years several legal modifications have been implemented which led to confusion regarding the earmark of incomes between the budgets from all levels, regarding the formation of income resources, especially the incomes of the local and rayon budgets.

Because the deduct norms (rates) of the local budget are established by the rayon council, this will not stimulate the creation of favorable conditions of economic activity for local authorities and local private initiative. If local authorities do not have stable incomes for their budgets, they will be put on hold and will de-

pend on the imposed quotas of the state budget, which contributes to the diminishing of the interest of increasing tax collections, and finding local solutions. An example is the land tax, which was transformed in a regular tax, and the mayoralties are more lenient in the control over the collection of this tax, because it will be transferred to the regional budget and only a small part will remain in the local budget. Similar situations will happen with the tax on real estates.

The reduced tax decentralization in Moldova together with the specific nature of the formation of the local budget makes the local public authorities dependent on the central public organs, having no decision making freedom on financial issues. The existent system defines the normative of expenses calculated with the number of inhabitants; the budget deficit is covered by the central public administration through transfers. As long as these big disparities exist in the formation of the local public incomes, it will not be possible to abandon the normative expense system, which has to be reviewed in such a way, so the local public authorities can handle the existent problems. The raising of the normative expenditures supposes the realization of financial decentralization or the redistribution of the public incomes for local public authority. The existing local taxes and the majority of the tax system in general in the republic are not favorable for local government. Of the 14 local taxes only four taxes work effectively in the territory, while the rest are rarely used. Most of the tax revenues come from Chişinău , who take most of the taxes in an area of over 200 km.

Another feature of the right to take autonomous decisions is connected with the completion of the local public expenses. We have mentioned previously that, the existent normative expenditures, which are settled by the Ministry of Finance, undermine the effective capacity of the local public authorities in the financial domain. The structure of the local public expenses: the transfer volume is determined by the settled normative's, which reduce the degree of local autonomy, because local autonomy is strictly limited by the proceedings of allotting and supervising financial resources which do not belong exclusively to them. The limitation of the freedom of LPA to take responsible and autonomous decisions leads to the inhibition of the local public authorities, because they can only take autonomous decisions on the "over incomes" (which surpasses 100% of the budgeted income, but not more than 120%). However less than 10% of communities are in this category. The rest is entirely or partially dependent on the normatives of the regional or central organs.

At the end of 2003, the Parliament approved the new law regarding the local public finances. At the first glance it seems that the new law is relatively democratic and suitable, and the only innovation seems to be the introduction of a special financial statute for municipality of Bălţi. However if we look deeper we can observe that in the domain of income collection and distribution significant changes have been made. First of all the number of local taxes has been reduced. It is true that, of the 14 local taxes established in the old law, in fact only three were really used, and it was necessary to change something. If the central authorities are not capable to elaborate taxes which would work in the territory, it would be better if the local public organs have the right to introduce new taxes, or at least have the right to come with legislative initiatives regarding the introduction of new local taxes.

Another essential modification relates to the types of deductible incomes; however from this list VAT is absent. The local experts estimate that only in 2004, local authorities will lose around 220 million lei to the state budget due to the VAT payments, without taking into account the decrease of their own tax collection and the declining image of local government.

This decision will have two important economical and political impacts on LPA. First of all the importance of transfers from the state will grow in the structure of local public incomes, which will lead to a larger dependency of LPA on the central government. Second LPA will be deprived of considerable income according to our estimations around 200 million lei annually, this sum is formed from the "over-incomes" obtained from the VAT gathering, which according to the law remain in LPA. Usually these "over-incomes" are used by communities for capital investments and economic development. Of the many laws which regulate the capital market one of the most important is the law of local public finances, article 14, which settle the access to the capital market and who has the right to appeal for loans. A positive modification is that the number of subjects who have this right has been increased.

## 2.4. The State of Municipal Ownership:

Effective local autonomy is unimaginable without patrimonial and financial resources and the necessary instruments for maintaining and assuring the execution of decisions and local development projects. The Civil Code, the law regarding local public administration and the Law regarding the public property of the territorial – administrative units, offer LPA financial means, which they can administer according to their needs. Ideal legislation is an important condition, but it is not enough to solve the problems of the patrimony based on the principles of local autonomy and the free market. In the Republic of Moldova there is a large difference between the legal rights of local government

and the real level of local autonomy. Certain parts of the legislative framework contradict other parts of the law, while others resolve only a part of all the social relations which appear in the process of administrating the public patrimony.

Generally speaking, the state policies on municipal property can be characterized only as a formal recognition of the right of municipal property. At the same time the state policies on municipal property are characterized through involvement in the competence of local authorities. This happens through forced goods and debts transmissions to the local authorities; the indirect expropriations of the municipal property goods; the delegation of competencies without financial resources, the adoption of decisions which change the local patrimony without consulting local authorities, the limitation of access to justice on defense of the patrimonial interests and rights etc. etc.

In this respect the following problems should be mentioned:

Through the adoption of the Civil Code and the law concerning local public administration formally the delimitation of municipal property was resolved in a modern and effective manner, dividing municipal ownership into different categories of goods which are property of the territorial-administrative units. The main problem is that there is a large gap between the juridical theory and practice. The majority of the respective legislative documents were not made according to the stipulations of the Civil Law and the law concerning the local public administration, thus maintaining the basic contradictions between the stipulations of the different relevant normative documents. On the other hand, the new concept of local government is not yet well known, and is being promoted and implemented by authorities at different levels keeping the confusion, the contradictions and the uncertainty of the status of municipal property. As a result, all the positive new legal standards regarding the property of the territorial – administrative units are inefficient and inapplicable. The central authorities have adopted abusive and contradictory normative acts, which do not correspond and even contradict the current legal concept of the municipal property (e.g.: the Law of local public finance – 2003 and the budget Law for 2004).

Until now there is no clear delimitation of state property from the property of the territorial units: counties, towns (cities) and villages (communes). This situation gives the central authorities the possibility for adopting, various abusive documents, through which the rights and the patrimonial interests of the local community are violated. A problem is that there is no clear demarcation between the public domain and the private domain of the ownership rights of the municipalities. In spite of the fact that the law concerning the public property of the territorial units, the Civil code and the law concerning local public authority's stipulates the delimitation of the public domain from the private one there is not yet a clear mechanism to achieve this. Without this mechanism the confusion remains over the juridical status of various municipal properties. It is not clear which goods are in the civil circuit (can be used freely, including changing ownership) and those goods taken out of the civil circuit (cannot be used freely, even through privatization). Thus various public goods which should stay out of the civil circuit may enter this circuit and be sold (e.g. cultural centers, municipal companies, cinemas etc.) while on the other hand goods which should be in the civil circuit and can be profitable to the local authorities may not be sold. This confusion limits the local authorities in the correct and effective use of municipal property.

Until now the conditions and the procedures for changing the status of goods from the public to the private domain are not settled clearly. Changing the status of goods from the public to the private domain and vice verse leads to a change in the juridical status of these goods. As a result of this transfer, the properties from the public domain are included in the civil circuit, thus making it possible for them to change ownership, including through privatization. If property from the private domain is transferred to the public domain, this property is then not allowed to change ownership. To avoid confusion and abuse in this domain (the illegal transfer of goods from one domain to another), it is very important to have clear and precise conditions and procedures for changing the status of the property of local government. In this respect, the Law concerning local public administration and other normative documents do not stipulate what are the criteria and the compulsory conditions for the transfer of property from one domain to another. More than that, the conditions and criteria are different for transferring goods from the public domain to the private domain than for the transfer from the private domain to the public domain, without affecting the rights and the interests of other subjects (for example the creditors).

There is no comprehensive register, which contains all the properties of local government and their juridical status. The existence of a comprehensive register of the local government property is one of the important conditions for an efficient development of local government property. At the moment the local registration system of local patrimony is too complicated, confusing and does not correspond with most of the current legislation. In other words it is inadequate and inefficient. Particularly, the patrimonial registry is kept by different people (secretary, survey engineer, book-keeper etc.), in this respect there are survey registers, account books of the assets and record books of fixed assets. At the same time, the stipulations, (of the Civil Code and of the Law regarding the

local public administration) are not taken into account. According to these laws a detailed separate record of state private property assets and that of the territorial-administrative units of both the public and private sphere should be kept.

A distinct feature of state policy in the sphere of municipal property represents the adoption of certain resolutions by the central public authorities that deprive local government of certain properties and income. These resolutions are reached without consulting the local authorities and breach the legal framework. For example government resolution nr. 1202 of 8.11.2001 regarding measures to settle the use of water pools, government resolution nr. 891 from 17.07.2003 concerning the installment of the Medical Assistance Emergency Service and the government resolution regarding the transfer of local government real estate to the state balance. In all these cases, the government tried to give the local government property (municipal property assets) either to private agents (water pools), or to new organizations, without the permission of the local authorities and without taking into account the rights and interests of the local collectivities. Some of these cases went to the Constitutional Court. Government resolution. nr. 1202 has been found to be against the constitution and violates the property rights and the competence of the local authorities (5 August 2003). Government resolution nr. 891, will be in court soon.

The process of delimitation of the property of the local authorities from the property of the central state shows that the central authorities neglect the patrimonial rights and interests of the local authorities. This happens despite a legal framework in which the central authorities are obligated to consult the local authorities during the delimitation process. The central authorities, against the resolutions and recommendations of the constitutional court are still adopting documents against the law. This is intolerable in a state of law. Especially, G.R. nr.959 from 04.08.2003 through which the majority of the underwater terrains have been transferred to the state, is a gross violation of the law. These terrains have been transferred to the state without consulting local authorities and without giving valid reasons (national interest) for the transfer. The majority of these terrains are not of national but local interest, this is a legal reason for considering them local public property. As a result of such settlements the state owns up to 60% of the land in some territorial units, while land is one of the main sources of income for the local budget.

The access of LPA to justice is an indispensable element of real and effective local autonomy. The limited access to justice is a distinct feature of the state policy in relation to local authorities. According to the modifications of art.4 of the administrative solicitor's Law, local authorities in Moldova are currently deprived of the right to fight normative acts adopted by the central government in court. This is a problem because the majority of the decisions in the domain of LPA (especially relating to municipal property) are adopted through normative government resolutions. Thus, for example, in the above-mentioned case (G.R. concerning the delimitation of public property); if a local public authority does not agree with the decision it is not able to go to court. Through this access to justice is being limited. The only possibility to defend oneself is by addressing the Constitutional Court, which is an indirect and quite difficult way of defending the rights and interests of the local authorities.

A specific category of policy used by the central authorities are the various directives, dispositions, circulars and other documents without juridical power, signed by top level leaders of the central administration (e.g. vice prime minister). Local authorities are given these obligatory instructions and indications concerning the administration of local patrimony, in spite of legal provisions. These legal provisions stipulate that the relation between public authorities of different levels is based on equality and collaboration and not on subordination.[26] In the same category we find cases of harassment and intimidation of mayors. This may happen opening (often ordered during an electoral period) an exaggerated penal and/or administrative file, based on supposed inadequate administration of the local patrimony and local public funds.

The analysis of the legislative framework, as well as the investigations done by IDIS „Viitorul" leads to the conclusion that the Republic of Moldova lacks an integral normative act that could settle the major problems regarding public property of the territorial units. The main issues of this law should be the: subjects, objects, the juridical regime, ways and procedures of passing assets from the public to the private domain, procurement and liquidation of property rights of the territorial units and the juridical guarantee to defend property rights, in accordance with the provisions and stipulations of the European Charter, Civil Code and local public administration Law in the Republic of Moldova.

## 2.5. The Statue of Locally Elected Officials and the Internal Organization of LPA:

A statute for locally elected officials is important for the local council to work efficiently and to fulfill their duties within the framework of local government. An important part of the statute must ensure, according to the stipulation of art.7 of the European Charter, the freedom to exercise their mandate. The law regarding the statute of locally elected officials adopted

on April the 19th, 1995 is still in force and has not yet undergone changes after the abolition of the judet councils and the appearance of the rayon councilors and the rayon president function, even this being an elected position. Besides the provisions in the law regarding local public administration, the public service law and the Electoral Code; the Law concerning locally elected officials specifies the conditions of eligibility, juridical incompatibilities and restrictions in exerting the mandate of locally elected leader. These laws stipulate the juridical and social guarantees, as well as the duties regarding the achievement of local self government actions, in accordance with the legislation in force. The statute of locally elected officials is applicable to all councilors elected for municipal and rayon councils and the deputies of the UTAG popular assembly. The law lists functions incompatible with the mayor or councilor mandate, with provisions similar to other countries, to avoid situations when these functions would influence work in the local council. For example obtaining personal profit after adopting resolutions with a social or economic impact. These incompatibilities are not abstract, but have a clear and well-defined aim, to exclude embezzlement after dishonestly using the power of the councilor or mayor mandate.

We emphasize here a functional imperfection and a normative collision. Thus, art.91, section 2 of the law concerning local public administration stipulates that the functions of rayon president and vice-president, as well as the function of mayor and vice-mayor are incompatible with the function of councilor.

This is valid for the function of councilor at any level, though there is no reason why a mayor could not be a rayon councilor in the rayon where he is mayor. At the same time the Law concerning the statute of the locally elected leader in art.7 part c) stipulates that: the local elected leader mandate is incompatible with the councilor position of a similar level council or of a councilor of different level councils of other territorial – administrative unities of second level (of a rayon) than the commune or village he was elected.

Another problem of the statute of locally elected official is the mayor's dismissal. To understand the context it is important to know mayors are also one of the categories of locally elected officials. Art.2 of the Law stipulates that: *„In regard to the present law, the notion of locally elected official refers to the village councils (comunnes), cities (municipalities) and* rayon*, deputies of the Popular Assembly of Găgăuzia and mayors".* Similar to the parliamentary mandate the local official mandate does not have a juridical relation between the voters and the elected, there is no subordinate relation and no agreement of will. In this sense, paragraph 1 art.4 of the statute of locally elected officials, as well as article 68, paragraph 2 from the Constitution, resolve for locally elected officials the following: „Each imperative mandate is null". In art.3 of the above mentioned law is stated that in the exercising of the mandate, the locally elected official is in service of the community. The stipulations prove that the mandate of the locally elected official is representative and at the same time irrevocable, this represents a protection of the independence of the local official in exercising his mandate.

At the same time, art. 33-paragraph (2), part a) from the Law concerning Local Public Administration says that the mandate of the mayor can not be exercised in case of revocation through a local referendum. This stipulation contradicts article 4 of the Law regarding the statute of locally elected officials that reads that „Every imperative mandate is null", as well as a series of articles from the Electoral Code that foresee the revocation of the mayor. Except this, we draw your attention to the stipulations of art.177, paragraph 2 of the Electoral Code, which states the reasons of revocation of the mayor are: (1) in case the mayor does not respect the interests of the community; (2) in case he does not fulfill his duties; (3) violates the moral and ethical norms.

Only a deeper analysis of these articles can demonstrate how abnormal they are, because there is no principle foreseen by the legislation that can state what the interests of the local community are. This makes it unclear in what conditions it can be proved that: „the mayor does not fulfill his duties" and who will judge if a mayor fulfils his mandate correctly or not. There are no normative documents that state completely what are: "the officially recognized moral and ethic norms". It is considered that in these conditions art.178 paragraph 2 from the Electoral Code is sufficient for the revocation of the mayor. This article states: *"The mayor is revoked from his function without any kind of local referendum, due to the resolution of the revocation of the juridical institution in case the Constitution and the laws are not respected, he participates in the activity of unconstitutional organs, or is in the state of incompatibility foreseen by the law."* This law is not hindered by eventual ambiguous interpretations or conflicts of authority, which can further weaken the system of local authorities from Republic of Moldova.

The recent revision of the system of local public administration introduced a new institution, called the rayon president. This institution substituted the president of the executive committee of the judet. This time the legislative suppressed the collective executive organ, which was in old times called „the executive county committee", attributing these functions to a uninominal organ, personalized the „rayon president". We do NOT have the idea that this new institution would not be legitimate, or inadequate if the law was more explicit in settling the ju-

ridical nature of this authority, but since this is absent from the law there are questions that need answering. Already in art.1, at „General disposals" we can discover proof that stipulates that „the president of the rayon is the executive authority of the county council" In the rest of the law there is no mention of the juridical status of the institution. Article 59: states that „this exerts the prompt management of local public problems in the limits of its competences; represents the county in relations with the government, but also with other central public authorities, with physical and juridical persons from the country and from other foreign countries, as well as in court, is the coordinating person of the deconcentrated public services from the frame of the county and exerts the attributions of the commission's president for exceptional situations". We can notice that, the law does not give any hints over the fact that the county president fulfils the function of the executive organ of the rayon council.

Art.60 from the law stipulates the main competences of the rayon president. Strangely enough nothing is mentioned about the obligation of organizing the implementation of the rayon councils' decisions. This is stipulated only in the domain of assuring the rule of law, where at part a) it mentions the execution of the decisions of the county council. Naturally a question comes up here. Why is there no obligation in the other the domains to implement the councils' decisions? From this we can conclude that the author of the law did not clarify the juridical nature of the institution analyzed above, instead giving the president too many competences in the individual exertion of his function of the executive organ of a representative of public authority. The repeated reading of the stipulations settled in art.61, makes us believe things through which to the rayon's president it is assigned „the right to emit disposals with a normative and individual character". We think that this article confirms one more time our prudence connected with the president's institution of the rayon council. This is due to the fact that it is nonsense that through private institutions adopted by only one person to set up administrative documents with normative nature, which, in their turn, could lead to sanctions in case they are not followed.

Another essential problem is that the law says nothing about the institution responsible for deconcentrated services in the rayon. In art.59, titled – „The role and status of the rayon president", in section (3) we quote: "the role and status of the rayon president is coordinator of the deconcentrated public services of the rayon framework." We should understand from these words that actually, the president is „just a coordinator", and not responsible for the administration of deconcentrated public services, concerning those public services which are taken from the central public administration, being autonomously organized within the framework of the respective administrative units! A logical question appears - if these services are taken from the central public administration subordination, under whose subordination are they and who is responsible for their administration. We understand that after changing this system in terms of legislation adopted in 1998, the institution of prefect has disappeared, an institution that was responsible for the deconcentrated public services. These services remained in the territory with the same status, but now the authors could not officially give these tasks to the rayon president. This would mean that he would become responsible, and subordinated to the central administration. This would cause serious damage to principle of local autonomy and to the principle of deconcentrated public services creating a relation of subordination and not collaboration as section 2) of art.6 of the Law stipulates.

Also interesting is that the executive bodies of local public administration authorities have under their supervision staff specialized in various areas. They are set up within the framework of the town hall or at the rayon level, ensuring, according to their working rules, various types of services supplied on behalf of the local council and the town hall. In order to have an efficient local council, this has a secretary responsible for organizational activities. The council secretary is also the commune or town's secretary. In this respect, the new legislation has preserved former rules regarding the secretary's status. But here we will mention quite an important problem, which was ignored both by the former legislation and by the present one. The law stipulates that the secretary takes part at the local council meetings, being responsible for elaborating minutes and for legal adoption of the resolutions passed. The law requires that the secretary should approve the resolution projects, regarding their legality. We should understand out of the content of this requirement that the local council can not start the resolution project examination if it is not approved by the secretary. The secretary can not refuse the adoption of the project in any means. If the project is legal he will make the respective inscription and will sign, and in case when he considers the projects or some of its requirements illegal, he is obliged to write it in the notification.

In this respect a delicate problem appears, if the council examines a decision, which is considered to be illegal by the secretary. Obviously, having the duty to adopt the decision may not admit the acceptance of documents, which contradict the legislation in force. However, if the document is passed and causes damage (financial) should we know who bears the responsibility for this? This article says that the secretary is responsible for the document's legality, however art.29 says that the councilors take in solidarity the responsibility of the council's work and for the resolutions for which they have voted. We notice a normative conflict, which was admit-

ted by the legislator and is a bad service to the stability of the local authorities.

Of course, the secretary can not be given the power to ban the authorities from examining any resolution, being obliged only to note the legality. But the secretary may be unskilled in this area, may possess no juridical knowledge, and he may just not notice the illegality and then, how can he be responsible for the legality and what kind of responsibility will he have to take, disciplinary, administrative, civil or criminal? In this case the law resolves nothing. The inner structure of the local council is simple and depends on the local collectivity's size, the patrimony that it administrates and the budget it possesses. In this respect, the law concerning local public administration, stipulates that the commune, town, city executive committee consists of the mayor, elected by the respective community by open, universal, secret and freely expressed vote. The villages (communes) and towns (cities) have one mayor and one vice-mayor each, Bălţi, Bender, Comrat and Tiraspol cities have one mayor and three vice-mayors each, Chişinău city has a general mayor and 4 vice-mayors, elected according to the law. Towns of over 15.000 inhabitants, through the decision of the respective council, may have 2 vice-mayors. The vice-mayors of the villages (communes), towns (cities) of fewer than 5.000 inhabitants exert their power on the public basis. The local council, at the mayor's proposal, on the basis of standard personal records passed by the Government, approves of the organization charts and personal records of the town hall staff. The mayor, according to the stipulations in the law, appoints and dismisses the town hall staff. The rayon council also approves the organizational chart and the members of its own staff and apparatus, based on standard personal records, approved by the Government. The personal record of the rayon council apparatus is appointed and dismissed by the rayon president.

The staff of the town halls and rayon council apparatuses is divided in two categories, public and technical staff. Public staff are those who are under the provisions of the Law regarding public services while the technical staff perform technical services so the local authorities can do their work, this category is governed by the labor legislation of the republic. The standard personal record confirmed by the Government represents the maximum level of the technical staff of the communes and towns. We will mention, however, that these standard personal records which are approved by the Government limit the initiative of the local councils, as the central authority is imposing a structure on them. We believe that this situation contradicts art.109 of the constitution and art.3 of the law regarding local public administration. This article states that the territorial units have financial autonomy and have the right of initiative regarding all local public affairs. Art.6 of the European Charter states that the local councils should themselves be able to define the size of the executive structures. There are numerous areas where the local authorities must be involved, but they do not have a qualified staff. Today, for example, only one person deals with trusteeship at the rayon level, though the proportions of the problems linked to child protection at the rayon level is wider and more complex. According to a government's resolution the rayon cannot employ a sufficient number of civil servants, and not even set up the boards considered necessary. For example the Child Protection Office, existing in the former judets, was eliminated from the rayon structure, leading to problems in planning social policy for the poor. The situation for the local authorities is even more alarming. Unfortunately there is no qualified staff in the town halls responsible for statistics and delivering social services performed to the population. There is also no network of social services for the rural population. Due to the fact that almost all local authorities are political entities, many questions appear linked the decision-making procedures and the management of complex social problems.

The central administration also sets the salary level for the technical and public civil servants of the local authorities. Thus, the expenditures of the administrative staff of the rayon councilors, the offices and departments subordinated to these councils and town halls apparatus are calculated on the basis of the Government's Resolution regarding the organizational charts and standard staff record. Government Resolution no.139 of 9.02.1998 must be taken into account: *"Regarding the payment of civil servants and people who perform technical services which ensure the functioning of local authorities on the basis of a single staff network."* The single tariff network is an inheritance from the former regime where the state was established tariffs for every service. Under today's circumstances, the state may establish single tariffs for the employees paid from the state budget. However for the employees of local public administration, we think that establishing the salary level is a problem belonging to the respective authorities, whose work is organized on the basis of local autonomy. This also means financial autonomy. The state interference in this area may be considered as an attempt to decrease the level of local autonomy.

## 2.6. Administrative Control and Legal Guarantees Against the Abuse of Local Government:

In order to ensure that the activities of public administration do not contradict the law on local public administration a method of control has been developed. One chapter is titled: Administrative control of local authorities. This chapter is divided into three parts: 1) adminis-

trative control; 2) legal control; 3)suitability control. The administrative control checks the observance of the Constitution, international treaties that Moldova has signed, the law on local public administration and other normative acts both by the local public administration and the rayon authorities. The administrative control also contains controlling the suitability and the legal control. Art. 69 of the Law states that the suitability control admits just partly what refers to the duties commissioned by the state to the local public administration. The administrative control stipulated in the law is organized according to the following principles:

- Exerting control only according to the procedures and in cases stipulated in the law;
- Observing proportionality between the interference of the controlling authorities and the importance of the interests they are protecting.
- Prohibiting local public administration authorities limitation right to administrate autonomously, in accordance with the law, the businesses which belong to private competence;

The territorial offices of the state control the legality of the documents adopted by the local public authorities. This is a mechanism through which the state verifies the legality of the use of local autonomy. The law on local public administration stipulates in art.71 that the territorial offices of the state control the legality of documents adopted by the local public authorities, such as:

- Councils resolutions at the local and regional level;
- Normative acts of the mayor, rayon president and the pretor;
- The documents concerning auctions and the land ownership deeds;
- Documents of employment and dismissal of staff of local public administration;
- Provisions which imply expenditures or financial commitments of more than 30.000 lei at the local level and 300.000 lei at the regional level;
- Documents issued in exercising good commission.

The suitability control, according to art.77 of the Law, has the right to modify or revoke the administrative document within 15 days of the adoption, on the basis of suitability. If the local public authority considers the decision of the central authority faulty they have the right to ask the judgment of the court. However, it is necessary to mention that these ways of administrative control are not in contradiction with the European Charter or stipulations of the constitution. There is a problem with who performs the legality control. Under the former law, the prefect had this right, as a representative of the government in the territory, appointed through a government resolution. The prefect held the status of public authority, administrating at the same time other deconcentrated services of the state in the territory. Without the prefect the solution found was to set up a state office in the territorial units, this office performs the legality and suitability control of documents adopted by the local authorities.

The territorial office does not have public authority because it is part of the inner structure of the government without the right to interfere in the public domain. Caution is needed while studying the competences of the territorial offices, because they seem to have more power than the law stipulates. At the opening of the territorial office in Edinet (in the north of Moldova) Prime Minister Vasile Tarlev stated:

"This office is meant to contribute to the accomplishment of the government program in Moldova: rebirth of the economy, rebirth of the country, as well as to the implementation of the economic and social development strategies"[27(13)]. There are bureaucratic barriers between the local government and the central government, which the territorial offices have to eliminate." (!)

It remains a mystery through which mechanism the territorial office can ensure the implementation, at a territorial level, of governmental economical strategies. We should probably understand that these offices will become the supporters of government policy towards the local and regional authorities. This brings to mind the stipulations of art.4 (4) of the European Charter through which „the competence given to local authorities must be normal, complete and exclusive. They can not be limited by other central or regional authorities, except for cases stipulated by law". As the law does not stipulate a subordinate relationship of the local authorities to the projects of the central government, the result is that the efforts of the territorial offices are misinterpreted, and could lead to illegal actions.

An important problem of local autonomy is still the legal protection of the local autonomy, or, in other words, the right of local government to protect their own interests through legal methods. The existing legislation creates a certain degree of protection against abuse which, however are not specified – it is not known against what kind of illegal actions the legislative guarantees will serve, and they are not efficiently explored by the local authorities. In this respect, we mention that the new law regarding local public administration – as well as the old one – does not contain a chapter or article to resolve concrete means of protection of local autonomy in accordance with art.11 of the European Charter. This article purposefully stipulates that: *„the local public authorities should have the right to appeal to the judicial system in order to ensure a free exercise of their competences and respect of the principle of local autonomy."*

Art.73 of the law concerning local public administration states only that „the local and regional councils may request from the territorial office verification of the legality of documents adopted by the executive authority". The mayor, rayon president as well as the secretary may also request a legal control of documents adopted by their councils".

The stipulations only mention the existence of mutual control between the council and the local executive committee. Not, about setting up a system of proper juridical guarantees against any kind of illegal actions, abuses, exceeding of competences, eventually, even on behalf of the territorial offices of the state office.

It seems that these juridical guarantees still remain theoretical abstractions, justice being entirely taken from the effective guarantee process of the rights and principles of local autonomy and decentralization. This law also does not give the possibility either to the council or the mayor to go to court to dispute decisions from the rayon authorities, the government or the ministries in case these break the legal rights of local government. Even in art.77 of the Law the local public authorities have the right to inform the administrative solicitor of the court, only if he considers that the suitability control resolution harms his rights, without specifying in detail deeds which would ensure immediate examination, in due time and competitive of the modifications.

The legislative framework does not clearly settle the rights of local public authorities to appeal directly to the jurisdictional bodies to defend the interests and rights of the local communities. According to art.2 of the administrative solicitor's law any legal or juridical entity that is harmed, has the right to appeal to the solicitor's courts. Because the Law does not specify what kind of legal entities can be plaintiffs, we may draw the conclusion that in this case they mean both legal entities of private law and those of public law.

Thus, the territorial units, being legal entities of public law (art.4 of the Law regarding local public administration), may participate in the administrative solicitor's courts as plaintiffs. At the same time, in art.5 of the administrative solicitor's Law purposefully – among persons with the legal right in the administrative solicitor – are mentioned the local public authorities. They are in this category of subjects only due to part.(f) of the same article, which stipulates that „the plaintiffs within the administrative solicitor's courts may also be other persons, in accordance with the law in force. The fact that the law of the administrative solicitors does not settle, deliberately, the mayor's and the local council right to attack the documents issued by the central administration bodies, constitutes an essential drawback, which makes the access more difficult of the local communities to the juridical system justice and which, in fact, proves wrong the claims of the authors of the recent legislation to „strengthen the local legality and autonomy".

More than that, through the administrative solicitor's laws, the government resolutions are relieved of legality control, they are controlled only with the constitution. We think that this juridical situation is intolerable, due to the fact that experience illustrates abundantly that the most frequent abuse comes through government resolutions, inadequately controlled and without satisfactory preliminary examinations. A final example is government resolution number 1202 of November 8. 2001 „Regarding measures to settle the use of water pools". Through this resolution, abusively, some of the water pools which were municipal property were given by the central government to the „Piscicola" Association. All the trials by the municipalities in the last 3 years failed, until the constitutional court declared the resolution unconstitutional. This case is not an exception, but it is an example of the regular abuse of power by the central authorities towards the local authorities, who are weakly protected by legislation. The stipulations in the text of the administrative solicitor's law, through which the Government resolutions of a normative nature are excepted from the legality control, unfortunately remain in force until now. This makes the repetition possible of government intervention in domains belonging to local authorities, without local authorities being able to do anything about it.

There is an effective instrument for local authorities to defend themselves against abusive documents issued by the Parliament, president and government which are in contradiction to the principles of local autonomy stipulated in art 109 of the constitution. This instrument is checking these documents with the constitution; however the legislation does not permit the local authorities to appeal directly to the constitutional court. Still, there is a possibility, though very complicated. It is possible only via people with the right to file a complaint, who local authorities may appeal to. Through this person and via an unconstitutional exception, the court may accept this route in case of examining concrete cases. These possibilities are difficult and inefficient for the local public authorities, being dependent on the willpower of other people.

## 2.7. Exerting the right to freely associate for local public authorities:

The developments in the last years prove that the local authorities in the Republic of Moldova are crushed by instability. If they cannot unite local public administration will not be able to reach the quality standards normal in Western European Countries. A key problem is the large number of associations. These associa-

tions are divided amongst them and poorly administrated. They do not contribute to the creation of a single democratic voice that can speak on the behalf of the local authorities. It is obvious that before and after the elections of May 2003, the associations in the Republic of Moldova tried to work in order to create a single association at the national level. This difficult objective spontaneously became the object of discussions immediately after the results of the local ballot had been announced, which brought about some entirely unexpected results. The government took two types of actions in reaction to this discussion. (1) The compulsory creation – via the newly founded rayons – of local and rayon branches and of one single association, APCLM, parallel to the marginalization of the other associations, (refusing to recognize the branches of the other associations), and (2) the elaboration of a draft law regarding the work of associations of local authorities in the Republic of Moldova [14] [28]. Both actions have been vehemently disputed by civil society. As a matter of fact this conflict between the government and the associations of local authorities was also discussed at the Conference between 2 and 4 July, and at the Round Table on November the 15th, organized by the Political Directorate of the CoE on RM's implementation of its duties concerning the CPLR Resolution of the 4th of June, 2003. We will further analyze the goal and the stipulations of the draft law, which aroused the most important questions.

The idea of a general legal regulation of the associations of local authorities is effective and useful. In this regard there is experience on the international level. Such a normative act, adopted according to the stipulations of the European Charter on Local Autonomy, normally should contribute to the strengthening of LPA associations. This would help the associations to become centers of promoting and defending the legal interests of local authorities, especially in relation to the central government, while at the same time bringing into practice the principles of local autonomy and building a modern and effective local administration. Such a law should not contradict the fundamental normative acts in force and the principles of a democratic and pluralistic society. Caution is also necessary to prevent the law of becoming a mechanism used for the narrow interests of certain government or political circles. Whether it is to diminish the influence of certain organizations or to deprive representatives of LPA of the possibility to express their opinion on issues of LPA both internally and externally. In our opinion, regretfully, the law contains stipulations, which make us doubt the constitutional nature and the impartiality of the future law, arousing our suspicions of the real intentions of the law.

Especially worrying is the stipulation of the 4th article through which a single organization at the national level is being imposed on the local authorities. This runs counter to democratic standards settled by the Constitution (art.4 and 5), as well as by the stipulations art.10 of the European Charter on Local Autonomy. Here the right is mentioned of the local authorities to cooperate and join with other authorities in order to achieve goals of common interest. Through the stipulations in art. 4 the local authorities will be deprived of an alternative and loose the right to choose and associate freely with an organization which would suit their interests. At the same time, we think that this stipulation is against art.54 of the Constitution. It stipulates that in the Republic of Moldova laws cannot be adopted which suppress or diminish citizen's fundamental freedoms and rights. In this respect, any limitation and restriction of the right of the local authorities (including the right of free association), should be interpreted as an obstruction and limitation of the rights and freedom of the citizen himself. Through universal, open and freely expressed vote these authorities have been entrusted with the right to act as representatives for the sake of and on behalf of the local collectivities. At the same time, as the practice of other countries (Romania, Bulgaria etc.) proves, the process of unification of LPA organizations should rely on good will, the agreement of the local authorities and their right for free election, however not through administrative documents (i.e. laws). If not, there is an abusive interference of the state in the associative process. The rights of local authorities to found associations at the national level are restricted

Moreover, we think that there is a contradiction and fundamental incompatibility between art.4 and art.8 of the law in question. On the one, it is mentioned that the association is the only organization at the national level (art.4), but on the other hand it is mentioned that the core objectives of this association are to achieve the right of association right of local public administration authorities and to promote democratic values in the development of local autonomy (art.8 p. a-b). How are these objectives to be achieved if a single organization of LPA is imposed by law, and there is no alternative for local public authorities? According to us the phrase: „it is the single association at the national level…" should be excluded. Instead we propose the following draft: „The association is a non governmental organization, noncommercial and politically not affiliated, open to all authorities of local public administration on the territory of the Republic of Moldova."

The 13th article of the draft contains a dangerous and contradicting stipulation which as a rule may either block the process of the creation of powerful and effective LPA organizations or lead to the creation of an organization completely dependent on the government. The first may happen because practically, due to excessive politicization in the Republic of Mol-

dova it will be very difficult to accumulate the necessary number of councils; at least the majority of the councils in the country. The creation of a dependent organization may happen by the use of administrative resources to gather 50% of councils. This seems to be incorrect from a strategic point of view. It is important for Moldova to have an organization that is able to promote the principle of local autonomy and the interests of the local authorities. We think that this stipulation may be interpreted (with that of the art.4) as a limitation of the rights of local authorities of free association. Moreover, it is unreasonable that due to these unfounded restrictions, for example, 30% of the councils which represent up to 60-70% from the country's population will be refused registration only because they do not represent 50% of the country's councils. On the basis of simple arithmetic it seems as if this stipulation as well as those mentioned in art.4, were introduced to form an organization subordinated entirely to the current government and to stop any possibility of criticism or opposition from the local authorities. Keeping this stipulation may lead to a considerable decrease of the role and effects of such an association, because it would not be able to get rid of the label of being a governmental organization, in spite of the stipulations concerning the non-governmental and apolitical nature.

At the same time, we think that if the law would be adopted in this variant, the local collectivities could associate successfully on the basis of their right of association, in the framework of non-formal associations (without a legal entity), without the necessity of registration at the Ministry of Justice or an other state body. The existence of this type of associations, in the absence of suitable national settlements, can be based on the European Charter of Local Autonomy regarding the right of association of local authorities (art.10). Thus, the maintenance of these restrictions, in our opinion, instead of creating adequate conditions for the consolidation of local authorities, will polarize and radicalize the associations of LPA. Thus, regarding what was mentioned concerning art.4, we propose the revision of art.13 section 2 in order to reduce or abolish the amount of councils necessary for registering an association at the national level (i.e.: 1/3, 1/5), which will increase the credibility towards this future normative act.

Another unresolved issue in the draft law, is that for the registration as a juridical entity at least half of the councils are needed. Thus, according to art.11 of the project, the Congress of representatives from the authorities of local public administration who want to be member of the association found the association. However it is not shown, how many councils can meet in the Congress to declare the foundation of the Association. However as a rule, the first Congress takes place on the initiative of the most active people and does not meet the necessary number of members for registration, reaching the necessary quota happens only after a certain period. Therefore, these stipulations may be also interpreted that two local councils may declare the foundation of an association and during a certain period of time (until reaching an amount stipulated by law, which requires a certain period of time), may work legally and without being registered as legal entities at the Ministry of Justice. In our opinion, these stipulations may lead to different interpretations, which may generate conflicts, as well as bring confusion in the process of creating associations. In this respect, in order to avoid this confusion and interpretations we propose, besides the proposal above, two possible solutions. The first is to cancel all restrictions concerning the number of councils necessary for registering an association. The second is to specify what is the minimum number of councils necessary for the founding congress of the association and the period of time during which this number should reach the size stipulated by law, in order to be registered.

Though art.6 of this draft resolves to ban interference of the public authorities and their civil servants in the associations activity, however, taking into account the recent example of the creation of associations in the Republic of Moldova at the order of the central government and the county administrations, it must be mentioned that such interferences may take place not only in the process of association, but also during the foundation. That is why, in order to avoid all kinds of speculations in this respect we suggest to add a stipulation to art.6 in order to ban the interference of the central public and counties authorities, including the following functions (prime-minister, the county president etc.) not only in the activity, but also in the foundation process of the associations of local authority. Moreover, in this article the consequences must be stipulated (civil, administrative and penal), for the interference in the foundation and work of LPA associations.

Starting from the stipulations of art.5 of the draft where the principles of transparency, legality, democracy, freedom of association etc. are mentioned, and art.9 of section 3, where it is stipulated that the statute of the association may not contain stipulations against the constitution, we think that section 3 and 4 of art.10, which refer to the method of adopting resolutions and the deliberative nature of the Congress, must be specified. Particularly, we propose to specify in section 3 what is meant with half: half of the association members, half of the representatives of all the local authorities from Moldova or half of the local authorities who represent not less than half of the Moldovan counties etc. At the same time, on the basis of the idea that this organization must work based on mutual consent, we think that in section 4 of art.10 a series of cases must be stipulated

when resolutions can be adopted by an absolute majority vote (50+1), as well as by a qualified majority (2/3 of the total number of association members). These kinds of stipulations, should lead to the establishment of a constructive dialogue and mutual consent in the framework of the organization's work.

Another problem consists is the fact that in the project nothing is said about the link of the local budgets to the financial duties of the association members (at least concerning fees). We think it necessary for this issue to be stipulated deliberately in future law, which will avoid problems and different interpretations. As to the patrimony of the association (art. 14) it must be mentioned that stipulation of section 3 point c of art 14 raises some doubts. Among other patrimonial sources of the association are mentioned also state subsidies. We think that this stipulation is opposed to the independent and non-governmental nature of the association and may create a possibility for future interference and control exercise on the behalf of the central government. We propose to exclude this stipulation because the state can not spend public budget sources for financing NGO's, otherwise, this organization will become governmental, with all the consequences. In our opinion art.11 section 2 should also be revised and specified. This article refers to the quota of representation in the association for each council. This stipulation which establishes a quota of one representative for every 6 councilors, can lead to a transformation of the association into very large and ineffective body. That is why, we propose a quota of representation of one person to nine members of the Local Council and also one person for the rest of the councilors, in case these are more than five. Moreover, the local authorities with more than 100 thousand inhabitants have the right to choose one more representative for every other 100 (50, 75 etc.) thousand inhabitants. This will respect the interest of some of the larger administrative units.

Concerning art.23, the government's intention to liquidate the existent critical associations is obvious. However first of all we have to mention that there is no association in Moldova which is to be considered a national association of LPA corresponding to the stipulations of this draft. None of the existent associations are based on the decision of the local council. Both in deed and right, all these organizations of LPA in Moldova represent associations (unions, federations, etc.) of the citizens – associations on the basis of the communal professional interests and/or other nature (art.1 the Law concerning the public associations). In Moldova there are associations of categories of employees in local public administration: mayors, councilors, accountants etc. a simple proof in this respect is the fact that all these organizations were created according to the Law concerning public associations. Their registration as associations of LPA according to the mentioned law would be considered illegal because there is a deliberate stipulation of this law (art.1 paragraph 3) through which the law stipulates that the law of public associations is not applicable to associations of public authorities.

Therefore, if this law will be adopted, it will be necessary to create a new LPA organization. This will be able to happen after a tough and unpredictable process of approval of the local councils from the majority of the mayoralties from Moldova. Thus, the stipulations of this draft cannot be extended over the existing organizations, for the simple reason that the law concerning public associations settles the foundation and the activities of these associations. This law stipulates the right of any persons including mayors, ex-mayors, and councilors of LPA etc. to associate in professional nongovernmental organizations. That is why, if there are going to be attempts to liquidate these organizations, these actions will be fought in the Constitutional Court and the European Court of Human Rights. On the other hand these actions will expose the real intentions of the authors of the draft law. Therefore, we propose to exclude the stipulations of art.23 which refer to self-dissolution on the basis of the decision of the Ministry of Justice. These stipulations are without a goal (there are no such organizations in Moldova) and the existent organizations work on the basis of the Law concerning public association. To make it worse the stipulations of art. 23 are anti-constitutional because it breaks the constitutional right of citizens to freely associate.

# III. Strategic planning for local government reform

## 3.1. The implementation of the recommendations proposed by the CoE in 2003

The local autonomy in the Republic of Moldova has regularly been monitored, especially in recent years. The accent in recent years has been on the compability with the European standards and practices, including the European Charter for Local Autonomy and the recommendations of the Congress of Local and Regional authorities of the Council of Europe. The resolutions adopted are not just formal recommendations for the central authorities to fulfill the requests of the CoE, but are also an important tool to show the dedication of the Republic of Moldova to join the European Union. There appears to be a public consensus of the need of monitoring local autonomy. But this consensus might quickly disappear if the government does not implement the recommendations it says to support.

In this context there is a plan of actions agreed upon at the congress organized on the 8th and 9th of July 2003 in Chisinau with the title: "Actual situation and future tendencies". Through implementing this plan of actions it would no longer be necessary to monitor Moldova's local autonomy. A problem in the continual changes made to the legislation is that there is no strategy to change local public administration to reach European standards. The plan of actions proposed by the European experts contained the following goals:

- Analyzing the current system of local public administration, and identifying obstacles in the process of decentralization in the Republic of Moldova;
- Formulating an action plan for removing the identified obstacles;
- Identifying the roles and responsibilities of every actor in the process of decentralization.

Immediately after the action plan was presented the CoE stated the responsibility of the government to finalize the plan and to start the implementation. On October 22-23 there was another round table on the previously adopted recommendations organized by the Directorate General of the CoE, department of cooperation of local and regional authorities. The goal of the round table was to monitor the progress made on the implementation of the recommendations made by the CoE. It is important to mention that one of the demands of the CoE is that besides the government officials also independent local experts, representatives of local authorities and academics should take part in the discussions concerning: Consolidating local democracy in Moldova". As during the summer the round table discussed subjects related to:

- Revising the legislation according to the stipulations of the European Charter;
- Starting an institutional dialogue between the central authorities and the local authorities as well as a dialogue between the central authorities and the associations of the local authorities;
- Consolidation of the statute of locally elected officials;
- Establishing a solid and clear inter budgetary relationship between the various level of government;
- Ensuring an effective monitoring of the actions of local public administration.

It would have been normal for the government to at least take heed of the lesson of listening to civil society after the grave irregularity with the European standards, in defining its' priorities of reforming and modernizing local public administration. It also would have been normal to at least publish the plan of actions which should have been published for 2004. Already at the end of October certain officials promised the creation of a transparent consulting institution for defining a strategy with the priorities for reforming local public administration. The main mission of this institution would be to start elaborating and planning the plan of actions recommended by the CoE, and to analyze the functioning of local public administration identifying problems and solutions in this domain. Unfortunately this institution has not been created yet, and the government of Moldova, which carries the responsibility for implementing the plan of actions has not said a word about the plan of actions since the meeting with the CoE.

To make the situation worse the central authorities have adopted new legislation in the domain of local public administration without consulting local authorities or experts on this new legislation. This make the repetition of the previous mistakes possible namely: legal contradictions and problems which have proven to be difficult to resolve. A perfect example of this is the adoption of the law on 10.10.03 on local public finance. Due to the fact that this law has been implemented recently (01.01.04) we have not included this law in our analysis, however we will mention one problem. The problem comes from the stipulations in art. 4: "Delimitation of competences in public expenditures". This article stipulates for each level (local, regional) the domains in which they can make public expenditures. Paragraph two of this article stipulates for the local council budget expenditures for implementing measures in the domain of military-administration. In paragraph four however the following domains are established for the rayon council: "supporting secondary schools, boarding schools, lyceums, ensuring public order and military-administrative activities.

These competencies according to the stipulations of art. 12 and 13 of the law on local public administration are delegated competencies. The financial resources for these competencies should not come from the local budgets, but from financial sources allotted from the central authorities. However until now the government has not transferred funds to the local budget for these delegated competencies, which makes it hard to monitor these expenditures. Even worse it makes intervention and control by the state imminent on these types of expenditures, which is against the stipulations of the European Charter. A confusing situation has also been created relating to the regulations of the statute of locally elected officials. The law on the statute of locally elected officials has not been changed, however there have been several declarations that this laws will be changed soon.

The institutional dialogue has remained only an idea. In reality there is no clear concept on how this dialogue could be regulated. This dialogue never really started, but stayed politically colored, and with a centralist bureaucratic model. Through this the central power dictated goals and gave indications. There has been no discussion or consultation with the local authorities. The government has not included NGOs working in this domain in the dialogue. Quite on the contrary, certain actions by the government in this area even lead to legal and constitutional contradictions

## 3.2. Final Recommendations

A careful analysis of the current situation in the field of local public administration reveals factors that negatively impact the implementation of an effective system of local public administration. Obviously, the most important constraint is related to the problematic economic situation in the Republic of Moldova, generating a chronic financial deficit in the local budgets and, as a consequence, limited possibilities to efficiently manage local public administration. However, the economic situation of the country cannot be a justification for several drawbacks existing in the legal and practical functioning of the public administration. The principles of local autonomy are considerably limited mostly to the autonomy of decisions which is explained otherwise through a permanent 'mentorship' (toutele) from the central and rayon authorities. First of all, this concerns mostly the rules and procedures of the local public finances. Currently, the methodology of the financial-budgetary planning does not have appropriate leverages to influence local autonomy, nourishing a general trend of diminishing the fiscal basis of local revenues and large expectations from state transfers. As a result, the share of the local revenues is rather limited, while local authorities remain dependent on the policies and limitation of the Ministry of Finance. A rather complicated situation is also experienced with the municipal ownership and the framework of property relations of the territorial-administrative units, concerning mainly the effective and real capacity of the local authorities to use freely their own property and real estate.

The current legislation does not specify what are: state, rayon or municipal goods. Their legal statute is often weakened by several legal inconsistencies and voluntary actions of the state administration. This is reflected specifically in a large number of conflicts that were met in the last years with various categories of properties: lakes and forests, estates and unfinished constructions belonging to several public institutions located on the territory of the current local authorities, including schools, health care centers and education. There is a list of urgent matters that should be urgently tackled in our opinion, including the following:

- there is no strict division of competencies between local and central public authorities, in other words, there is a lack of a specific tool to apply the principles of decentralization and deconcentraion of the public services;

- there is no division of responsibilities between local - communal - rayon and central authorities regarding the results of the administration;
- local authorities do not have the full capacity to accomplish their constitutional rights regarding local autonomy, because they lack financial resources and properties - public and private - at the level of municipalities, communes and towns;
- there are no specific regulations stipulating concrete forms of protecting local autonomy. Moreover, no legal act regulates the procedural relationships concerning the right of the local authorities to directly apply to the juridical system when their rights are affected/infringed by the central bodies;
- local authorities have no direct access to the constitutional court in order to apply for constitutional control of the normative acts and national laws that infringe upon the constitutional provisions setting up the limits of local autonomy;
- ownership rights and legal guarantees still exist mainly on paper because of a largely imperfect and incomplete legislation, which has been adopted with several inconsistencies, which does not explicitly regulate the property relations of the local authorities with other legal entities.

The analysis of the current legislation in Moldova reveals that the country still lacks a unitary legal framework that would improve most of the aspects regarding the ownership of the territorial-administrative units (entities, legal statute, ways and rules of transfer from the public into private ownership, privatization, etc) in accordance with the spirit and letter of the European Charter, Civil Code and the legislation on local public administration.

The return of the rayons to the territorial framework of the country did not coincide with an active normalization of these relations. The administration has approached the citizens but not public services. Thus, in order to demonstrate that the latest reform has reduced the local bureaucracy, the Government has decided to limit existing municipalities with more than half of their local personnel. A specific decision adopted by the Government which has a very severe impact on the current opportunities of the municipalities to hire and dismiss their personnel has a large prohibitive force on the current decision-making autonomy of the local authorities. This is however not applied with the same force on rayon administrations, which has significantly increased their staff and functions, contrary to the previous recommendations of the CPLRE. Therefore, there is a certain propensity to apply the principles of staffing and salary rates on the basis of unified salary system inherited from the previous regime, moreover, in order to justify the numerical decline of the municipality personnel as a result of the latest reform, the Government intervened actively with a sharp reduction of the local communes and towns. Of course, as a result, the quality of public services dropped, while citizens became alienated from the local decision-makers.

The reform of the local public administration is feeding important public debates. However, the state administration is continuously neglecting the role of public consultations and reform-planning of its policies and programs. As a result, the state administration cannot share its commitment to reform the system of public administration with prominent civil society organizations, associations of mayors, and other professional bodies. It seems that the process of planning reform is still conceived according to the old-fashioned techniques that do not leave any space for public consultation and policy process. We think that the country would need a large assistance in the planning of the public administration reform, aiming to:

- adjust the professional capacity for planning and decision making, increase the knowledge of the decision-making and legislative process in accordance with the rules and norms existing in several European states;
- provide better and more reliable information on the objectives and principles of the planned legislative and normative changes, improving communication with the public, involving the professional and research community, business circles and associations of local governments in order to upgrade the quality the projects with the aim to magnify the solidarity of various social groups with the political targets of reform;
- improve the quality of preparatory activities of the drafts of the law concerning their material and technical-legislative content, setting up clear responsibilities for the professional evaluations and ad hoc evaluation of the draft laws, conditions required for their adoption and latter implementation;
- orient the preparation of the new drafts of the law, more structured and comprehensive, towards the older practices of changing legislation and producing amendments, which shall

be vastly coordinated with the rest of the legislative acts;

- increasing the horizontal and vertical coordination of the planning reforms within the Governmental agencies, improving the process of preparing legal notifications on behalf of ministries and other central bodies, which would require a radical transformation of the process of planning reforms by curbing unrealistic expectations and efforts mostly focused on short-term results, based on a significant increase of professional requirements from the public servants of the Government and sub national authorities;

[1] European Parliament resolution, Moldova Suverană, January the 6th 2004

[2] Chişinău, May the 23rd 2002. (INFOTAG).

[3] The rules regarding the organization and working of the territorial offices of the State Chancellary, adopted through the government decision regarding the territorial offices of the State Chancellary, No.992 from 12.08.2003, with its annexes No.1-4, later approved.

[4] Moldova Suverană, October the 10th 2003, nr.177

[5] The speech made at the Mayors' Assembly on the 15th of April. Moldova Suverană, April the 23rd 2002

[6] Letters addressed to the TV manager, Mr. Efremov, were addressed in September and November 2003, by the National Council of NGOs from RM, associations of the local government and think tanks.

[7] Flux, August the 12th 2003

[8] Recommendation nr.110 „Over the local and regional democracy in Moldova", June the 5th 2002

[9] Press release of the CPIC from December the 5th 2003

[10] Moldova Suverană, October the 2nd 2003

[11] Vremea, August 14th 2003

[12] The Project was published on July the 9th 2003 in the newspapers Moldova Suverană and Nezavisimaia Moldova

[13] The Public Opinion Barometer, IPP, November 2003

[14] National Opinion Poll done by Iligaciu SRL, in February 2002, at the request of IDIS Viitorul

[15] Flux, August the 22nd 2003, Claus Neukirch: the OSCE plan does not exist

[16] Nicu Popescu, The EU implication in the settlement of the Transnistrian conflict, Moldova Azi, August 2003

[17] Flux, August the 14th 2003

[18] Appeal of representatives of civil society from the Republic of Moldova to the EU, USA and the neighboring countries – Romania and Ukraine, November the 21st 2003.

[19] Timpul, December the 19th 2003

[20] This offers the rebel authorities enormous possibilities to block any organic laws and decisions adopted at the federal level, including the Constitutional Federal Court. Until 2025, the federal laws are adopted in the Senate, with ¾ of the votes, in which, Transnistria will have 9 of the 26 senators, or more than ¼ from the total number. In these conditions, any attempts to dispute certain illegal initiatives will be blocked.

[21] In its report to the Congress of Local and Regional Powers of the European Council Prof. John O'Louglin mentioned: „Although the stipulation of the law from 2001 is almost identical with that of the text from 1998, suppressing the rayons and the metropolitan region Chişinău, restoring the old rayons and the interpretation given by the Moldavian authorities based on the principle of „the vertical power" and the „ interaction of the legislative and executive parts of the power", shows clearly that the new law marks a step back in the transition of the Republic of Moldova to a democracy and are difficult to conciliate with the Charter's stipulations".

[22] Public Opinion Barometer, November 2003, IPP

[23] *Rapport sur la democratie regionale en Moldova CPR (7) 4 (2000) – Recommandation 84 (2000) et Resolution 103 (2000)*

[24] Statement of Preliminary Findings and conclusions, ODIHR Mission report on the local elections, 26th of May 2003. 27 Moldova Suverana, December 12th 2003

[28] See the LNAPM and FPLR Declaration of November 26th, 2003 to the CoE and the RM Government